FINAL REPORT

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TITLE: Federal intervention under section 93 of the BNA Act.

Div: VI Report No. 1

ACCOPRESS
GENUINE PRESSBOARD BINDER
CAT. NO. BP 2507 EMB

ACCO CANADIAN COMPANY LTD.
TORONTO
OGDENSBURG, N.Y., CHICAGO, LONDON

FEDERAL INTERVENTION UNDER SECTION 93 OF THE BRITISH NORTH AMERICA ACT

Report Presented to the Royal Commission on Bilingualism and Biculturalism.

Laurier L. LaPierre

May 1966.

PREFACE

This study deals with the federal government's interventions in education.

At certain times since 1867, the federal government has been asked to intervene in the field of education either to protect minorities under Section 93 of the British North America Act, or to fulfil its responsibilities under other sections of this Act.

The central purpose of this study is then the search for answers to the following questions:

Why did the federal government intervene?

Why did it not intervene ?

What principles were used to explain intervention or non-intervention ?

And under what form did intervention take place?

It goes without saying that this study is only concerned with the application of Section 93, it is not concerned with the rôle of government agencies, Ministries, Departments or Crown Corporations.

In the process of carrying out this research project, I consulted pertinent material in several archives. A list of these may be found in the Bibliography. It was also necessary to consult parliamentary and legislative debates, sessional papers of the various governments involved, and other pertinent official documents since 1867. A list of these sources and of the secondary sources used may also be found in the Bibliography.

It would have been impossible to complete this report without the co-operation and assistance of Mr. Richard Wilson, Mrs. Elisabeth Nish, and Miss Ann Stalker who at various times worked as research assistants on this project.

I would also like to record my gratitude to the officials of various archives in Canada for their co-operation and to express my gratitude to the secretarial staff of the French Canada Studies Programme, McGill University, for their assistance which often went far beyond the call of duty.

Laurier L. LaPierre.

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INTRODUCTION

1. Public and Separate Schools in British North America before Confederation.

Before 1867 there existed some form of school organization in every British colony in North America. These schools were either public in the sense that they were non-sectarian and attended by a majority of Protestant and English-speaking students; or separate, that is, denominational. Most English-speaking Roman Catholic children attended denominational schools as did French-speaking Canadians who lived outside Canada East (Quebec). In that colony all the schools were either Catholic or Protestant and no distinction was made between public and separate schools.

Certain colonies made legal provisions for the separate schools within their frontiers, while others allowed them to operate without legal sanction. In the more sparsely populated areas of British North America where there was no form of "Responsible Government," there existed only church-supported schools which were in fact separate schools.

With the exception of Canada East, the colonies of British North America supported sectarian schools more out of political necessity than conviction. For the most part these colonies were affected by the North American trend towards non-sectarianism in education. For reasons of cost, efficiency, and "democratic" opposition to the entrenchment of privilege, the majority of British North Americans believed that the separation of students according to their religious convictions was a form of segregation and inimical to the type of society they wished to create in their new environment. Although this point of view was more practical than philosophical; nevertheless many shared the view of one of George Brown's correspondents to the effect that: "The training of the youth of Canada in such sectarian institutions as either Victoria or Trinity College is a curse to the country; sowing the seed for a future harvest of bitter divisions and jealousies." [1.]

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1. Public Archives of Canada, Brown Papers, D. Wilson to G. Brown, January 4, 1865.

The Roman Catholic population, however, opposed this trend since Catholic practice insisted upon church-controlled education. It was argued that the Church, as the institution which had been given the divine mission of leading men to their eternal destiny, had the responsibility of creating the institutions whereby her children would prepare themselves to enjoy the eternal bliss of heaven. The state, which was concerned only with the temporal destinies of man, was subject to the Church's authority in the matter of education. In fact governmental responsibility was limited to financial support of denominational schools. The many conflicts which arose in the various colonies over the question of schools resulted from the clash of these two different conceptions.

The area which became the most concerned with the question of separate schools was the western half of the United Province of Canada. As early as the 1820's the Roman Catholic authorities in Canada West (Ontario) were pressing for separate schools. The pressure abated while E.G. Ryerson was establishing his great public school system, which until the 1850's seemed to satisfy the Roman Catholic authorities. However, with the arrival of Armand François Marie de Charbonnel as Bishop of Toronto in 1850, the pressure for separate schools broke out in the now famous controversy between the new Bishop and Tyerson. Whether or not Ryerson was right in thinking that "foreign ecclesiastics" were manipulating the Bishop, the result of the increased agitation was the passing of several acts which made provisions for separate schools. These acts culminated in the Separate School Act (the Scott Act) of 1863. Separate schools were given legal sanction, but the Department of Education retained control over the curriculum, test books and the qualifications of teachers. Ryerson vainly hoped that with these concessions the controversy had ended.

No such problem arose in the sister section of Canada East (Quebec). There the school system was anowedly confessional, and in this case the separate or dissentient (as they were known) schools were Protestant. Since the schools were <u>all</u> sectarian, the position

of the Protestants was not comparable to that of the Roman Catholics in Canada West. John Rose, a Liberal-Conservative ally of John A. Macdonald, paid tribute to the French-speaking majority in Canada East when he said during the Confederation debates:

> Now, we, the English Protestant minority of Lower Canada, cannot forget that whatever right of separate education we have was accorded to us in the most unrestricted way before the union of the provinces, when we were in a minority and entirely in the hands of the French population. We cannot forget that in no way was there any attempt to prevent us educating our children in the manner we saw fit and deemed best; and I would be untrue to what is just if I forgot to state that the distribution of State funds for educational purposes was made in such a way as to cause no complaint on the part of the minority.[2]

What difficulties there were arose out of the special nature of the relations of Church and state existing in that colony and the Protestant's fear that an increase in ecclesiastical power could be dangerous to their rights. Yet their solution to this fear was not to suggest non-sectarian schools. Canada East remained the only portion of British North America which was not affected by the North American trend toward non-sectarianism in the schools.

The situation in the Maritimes stood between the strife in Canada West and the lack of discord in Canada East. Nova Scotia allowed separate schools to operate, but never gave them legal recognition. No controversy arose over the question of legislation until Confederation became a likelihood, at which time the hierarchy felt that something should be done to guarantee separate schools legally. Agitation for this guarantee increased, especially when Premier Charles Tupper introduced a Public School Act in 1865 which stipulated that all rate payers would be taxed for the support of the public schools. The Roman Catholic authorities were quite disturbed by this legislation since no provision was made for separate schools. Attempts were made to coerce Tupper into changing his legislation but to no avail. Nova Scotia still had no legal separate schools when the Mother Parliament in London passed the British North America Act.

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2. Parliamentary Debates on the Subject of the Confederation of the British North American Provinces, 3rd Session, 8th Provincial Parliament of Canada, 1865, p. 410.

Prince Edward Island and New Brunswick also experienced similar agitation when they attempted to favour a public non-sectarian school system. Again, no definite arrangement was made about separate schools, but as will be seen in Chapters I and II, the government tolerated the existence of certain denominational schools.

In the West, that vast area which eventually became the Prairies Provinces of Canada, there was nothing even remotely resembling a school system at the time of Confederation. The Hudson Bay Company administered this huge territory but as furs were more profitable than scholars, the Company had no interest in education. Interested parties, however, were free to establish schools at the various Company posts. The few schools that were set up were run by individual ministers who had gone out on their own, or were sent by their churches to set up mission schools. When Manitoba became a province in 1870, the small settled area had a de facto dual confessional school system, but there was of course no legislation establishing it.

On the other side of the Rockies, the Crown colonies of Vancouver Island and British Columbia gave scant consideration to separate schools. The issue arose only one, and it was promptly voted down. After the two Crown colonies were united, and before British Columbia entered Confederation, the government established a non-sectarian public school system which continued in force after the date of entry.

The relationship of education to church and state had attracted some attention in all the British North American colonies by the time of Confederation. The only Colony to have incorporated sectarianism willingly into the school system was Quebec, which had a Roman Catholic majority. In all the other colonies the non-Roman Catholic majority could not see why duplicate systems of schools were necessary. The Roman Catholic advocates of separate schools had been largely unsuccessful in their pleas, not only because they were outnumbered, but because their arguments for separate schools were unconvincing to a generation which associated non-sectarianism with democracy and equality.

2. Formulation of the Terms of Section 93 of the British North America Act.

The majority of the delegates at the Intercolonial Conferences of London and Quebec (with the exception of those from Canada East) had just emerged from unpleasant struggles over the school issue in their own colonies. They were thus reluctant to re-open the question, and were happy to adopt any measure which might preserve the recent and hard-won status quo. On Monday, October 24, 1864, at the Conference in Quebec, Oliver Mowat of Canada West put a motion enumerating the subjects to fall within the jurisdiction of the provincial legislatures after Confederation. Among them was "Education." The following day, Thomas D'Arcy McGee the leader of the English-speaking Roman Catholic population of Canada East, moved the following addition to "Education": "saving the rights and privileges which the Protestant or Catholic minority in both Canadas may possess as to their denominational schools at the time when the Constitutional Act goes into operation." Unfortunately, the available accounts do not describe the discussion that preceded McGee's amendment, but it was agreed to before any other point was allowed to intervene. The final form of Quebec Resolution No. 43(6) uses the word "Union" instead of "Constitutional Act," but this was the only change made to McGee's motion.

There are two important things to note about 43(6). First, it clearly sought to perpetuate the status quo on separate schools. It protects only existing privileges and makes no mention whatever of their extension. In this respect, it would seem accurate reflection of the desires of its authors. Second, it is concerned solely with the two Canadas and no other colonies. This is significant. At this point, October 1864, the demand for separate schools in Nova Scotia had not yet been fully killed by the Tupper Acts, but the issue was negligible in the rest of the Maritimes. Consequently, the delegates most concerned with the issue were those from the Province of United Canada.

Yet even in United Canada, Resolution 43(6) received relatively little attention. The scheme as a whole, the intercolonial railway, defence, and other topics all occupied far more of the delegates' time and energies than did education.

In the years of Union government the religious minorities in both halves of United Canada had always looked to their co-religionist majority in the other half for the attainment and maintenance of their educational rights. Now the colony was to be split again. Not unnaturally, the minorities wanted some sort of guarantee that the new provincial majorities would not take back all their hard-won educational concessions. Thus George Brown could say that the compromise embodied in 43(6) was essential to the success of Confederation itself.[3] Few people were genuinely critical of it; it was criticised by those who were against the Confederation scheme as a whole (A.A. Dorion and Sandfield Macdonald both voted against the main resolution) and the two minorities referred to were concerned, but no one felt the provision of 43(6) sufficiently unjust to warrant holding up the whole scheme. The measure obviously had the support of John A. Macdonald, George Brown, G.E. Cartier, and Hector Langevin - an anomalous group which included both the traditional arch-enemy of separate schools (Brown) and the man who, according to J.H. Gray, was assumed to speak with the authority of the Roman Catholic clergy (Langevin).[4]

During the winter of 1864-65, after the Quebec Resolutions were made known, the Protestant community of Lower Canada realized that 43(6) would have the effect of "freezing" their school privileges. An agitation was launched to re-draft the educational clauses in the proposed constitution. Alexander Tilloch Galt, described as "the acknowledged though somewhat reluctant spokesman for the Protestant minority in Lower Canada," took up the Protestant cause. In a famous speech which

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3. Canada, Confederation Debates, 1865, 95.

4. Ibid. 196.

5. J.S. Moir, Church and State in Canada West (Toronto, 1959), p. 178.

he made in Sherbrooke on October 28, 1864, he declared:

> It must be clear that a measure would not be favourably entertained by the minority of Lower Canada which would place the education of their children and the provision for their schools, wholly in the hands of a majority of a different faith. It was clear that in confiding the general subject of education to the Local Legislatures it was absolutely necessary it should be accompanied with such restrictions as would prevent injustice in any respect from being done to the minority.[6]

He asked that the Taché Government present in Parliament a measure "for the amendment of the school laws" before Confederation was allowed to go into effect.

However, it was not until July 31, 1866, that the government finally got around to presenting the promised bill. Protestant agitation was by then twenty months old, and Roman Catholic protest and counter-agitation only a month younger. Letters, articles and pamphlets were written, the authors always assuming that the other religious group was better off than their own supporters. The Protestants of Canada East demanded to be put on "an equal footing" with the Catholics of Canada West. While Catholics of Canada West insisted that if the Protestants of Canada East were to have a new school bill, then they too should have one.

By the Educational Bill of 1866, the Protestant minority of Canada East was exempted from paying school taxes for the support of the schools of the majority. Section 12 provided that four of the Protestant members of the Council of Public Instruction could ask the government to pass an order in council establishing distinct and separate management for the Protestant schools. This meant a Protestant Deputy Superintendent, a Protestant Council of Public Education, and an adequate division of provincial aid.[7]

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6. Montreal Gazette, Oct. 28, 1864.

7. United Canada, Sessional Papers, 1866, No. 239, 1-4.

The Bill was hotly debated and the Roman Catholics of Canada West took this opportunity to secure their own educational privileges. They proposed a bill to "extend to the Roman Catholic Minority in Upper Canada, similar and equal privileges with those granted by the Legislature to the Protestant Minority in Lower Canada."[8] The debate which followed made it impossible for the government of Canada East to pass its own legislation regarding Protestant schools in Canada East and both bills were withdrawn.[9]

Although the government was exasperated at the conduct of the Roman Catholics of Canada West, their leaders had a case. Macdonald once received the following letter from the Bishop's Palace in Toronto:

> If our demands for an efficient system of schools be just in themselves, by what right are we to be told that our schools must forever remain inefficient unless dissident schools in Lower Canada are placed upon a certain footing. Either our demands for an efficient system of separate schools are founded in reason and justice or they are not. If they are not, why allow us separate schools at all? Why not abolish them at once and bid the Catholics of Upper Canada to hold their peace, because the majority are determined never to listen to their just demands. If on the contrary the claims of the minority in Upper Canada are founded in equity and justice, they should be allowed to stand on their own foundation irrespective of what may take place in Lower Canada or anywhere else, because justice is not a relative thing but is absolute and immutable: Consequently, the Catholics of Upper Canada should not be told that because the just demands of the Protestant minority in Lower Canada are not to be conceded, they must therefore be content. If wrong is done to Lower Canada, is that a reason for the Catholics of Upper Canada to be consoled? Will an injustice in Lower Canada atone for an injustice in Upper Canada?[10]

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8. United Canada, Sessional Papers, 1866, No. 247, 1-3.
9. Archives de la Province de Québec, Collection Chapais, Hector Langevin to Edmond Langevin, July 31, Aug. 3, Aug. 6, Aug. 7, 1866.
10. Public Archives of Canada, Macdonald Papers, A. Macdonnell to John A. Macdonald, March 4, 1865.

The result of all of this agitation was that by the time of Confederation nothing had been done to place on a more secure footing the educational privileges of the religions minorities of Canada East and Canada West. Nor had the government been able to insure the future development of the dissentient and separate school systems which existed in both colonies. The entire problem was left to the legislatures of Quebec and Ontario once Confederation was established.

However Galt and the Protestant minority of Canada East made sure at the London Conference that 43 (6) was repealed and that more adequate protection was introduced in its place.

The educational provision of the London Resolutions guaranteed the legal rights of Protestant or Catholic minorities with respect to denominational schools in any province, (not just in the two Canadas, as 43(6) had done;) extended constitutional protection to any system of separate schools which might be set up in the future (protection through an appeal by the allegedly injured party to the federal government); and empowered the federal government to enact legislation to remedy any such injury.

Galt himself moved these additional provisions. Again, there appears to be no detailed record of any discussion which may have taken place, but it is possible to make a good guess at the forces behind the changes.

The issue which had been calmly settled at Quebec was once more inflamed. The events of August and the preceding months had convinced Catholics that Canada West must have a new bill to replace the Scott Act. Galt's failure to put through an educational bill for Canada East meant that something would have to be done to appease the Protestants of that colony. Last, but far from least, Archbishop Connolly of Halifax, having failed to impress his views upon Charles Tupper at the provincial level, came to London to plead the cause of separate schools.

Connolly wanted more generous provisions built into the new constitution so that the minority in his province and the other Maritime provinces would be adequately protected. In a long letter to Langevin, he stated his requirements:

> 1st.- We want no more nor no less than what is to be given to the Protestant minority in Lower Canada and which I am now happy to perceive is to be extended to the Catholic Minority in Canada West.
>
> 2nd.- We want the present School laws of the Lower Provinces to be practically and at once abrogated in all that makes it obligatory on Roman Catholics to build and support what is called a Common School in all School districts where there are ten or more Catholic ratepayers.
>
> 3rd.- I have no objection to have Catholics go to such Schools where the Clergyman and the Catholic residents feel themselves that they have no reason to complain, but for Universal peace sake and on principle I would vastly prefer what Protestants in Lower Canada and everywhere else insist on and that is total though not compulsory separation ab initio.
>
> 4th.- With our local education laws changed in the Lower Provinces as far as Catholics are concerned and radically changed by virtue of our new Constitution I want right of appeal to the Central Government & Legislation (sic) in the interpretation and execution of all these laws.
>
> That all this can and will be effectual so as to have peace and satisfaction on all sides I argue from the fact that the local Educational laws in Lower Canada are now to be radically changed by the Delegates in favor of the Protestant minority and if such changes are to be made for the (4) Protestant why not the same change for the Roman Catholic minority throughout every other part of the Confederacy.[11]

The best solution to this complex problem would of course have been to protect dissentient and denominational schools which existed either by law or by custom at the time of Confederation. However this solution was rejected. In a long letter sent to his brother Jean, the Bishop of Rimouski, in the midst of the New Brunswick school crisis of the 1870's, Langevin explained that this solution had been unacceptable at the London Conference because it would have meant constitutional recognition of an educational state of affairs to which the Maritime Provinces had refused to give legal recognition.[12] As he wrote to his episcopal brother:

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11. Ibid., Connolly to Langevin, Dec. 15, 1866.

12. See Chapters I and II

> Mgr. Connolly ... a essayé d'obtenir de nous que nous donnassions par l'Acte de la Confédération le système des Ecoles séparées du Haut ou du Bas Canada aux 2 provinces maritimes, mais il a bientôt compris que nous n'étions pas là pour imposer à ces provinces une législation qu'elle n'avait pas encore voulu se donner à elles-mêmes... .[13]

In their final form the educational provisions of the British North America Act became a separate article with four subsections.[14] The terms of Section 93 protected the rights of any denominational schools already established by law in the provinces entering Confederation; recognized that the rights of the Catholic minority in Upper Canada should be extended to the Protestants of Lower Canada; established the procedure for appeal if these or similar rights in other provinces were ever endangered; and granted the federal government power to enact remedial laws if the provincial legislature involved failed to redress any infringement recognized by the Governor-General in Council. No mention was made of how the problem would be dealt with in future provinces, nor of how sectarian schools which existed by custom (but not by law) should be treated. These two ommissions have resulted in some of the stormiest chapters in Canadian history.

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13. Collection Chapais, Langevin to Jean Langevin, Feb. 11, 1872.

14. See Appendix II for exact terms.

CHAPTER I

THE NEW BRUNSWICK SCHOOL CRISIS OF 1871-74

Introduction

Confederation was hardly four years old when it had to face its first educational crisis. On May 17, 1871, the Legislature of New Brunswick passed an act entitled "An Act Relating to Common Schools," but commonly known as the Common Schools Act.[1] This Act, which provided for the creation of a system of free, tax-supported schools, became the centre of one of the most bitter and prolonged controversies in Canadian history. Buried deep in the Act was Article 60 which stated: "that all schools conducted under the provisions of the Act shall be non-sectarian." Therefore, schools which were not conducted in accordance with the Act could not receive public funds. Everyone in the Province had to contribute to the support of public schools, even if they chose not to send their children to them. In this, as in all its other terms, the Act repealed all previous school privileges.

The Roman Catholics of New Brunswick, who comprised more than one third of the population of the Province, considered the Common Schools Act unacceptable, although most of them did not send their children to Catholic schools. It fell to the Catholic hierarchy, clergy, and certain important elements of the laity, to oppose the new legislation. They contended that it was unconstitutional under the relevant provisions of the British North America Act, which, while granting to the legislatures the exclusive right of making laws in relation to education, stipulated that: "nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have

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1. New Brunswick, Statutes, 34V. c.21, 1871.

by law in the province at the Union."[2] They believed that such denominational schools had existed in New Brunswick prior to Confederation.

Certain Catholics were prepared to go a long way in their objection to the law; in fact, pacifist resistance may be said to have been introduced in post-Confederation Canadian politics over this issue. The Bishop of Saint John preferred to have his carriage and horses sold by the public auctioneer rather than pay his new educational taxes. Many Catholic priests followed his example and found their cows and other goods confiscated. These and other incidents which added to the cacophony of the press and politicians did not create an atmosphere conducive to constructive thought on the significance of the moment, which was the first time that provincial autonomy came to face with the possible use of Ottawa's powers of coercion.

Unable to obtain redress from the local Legislature, the Catholics of New Brunswick sought intervention by the federal authorities. At first, they tried to have the Common Schools Act disallowed by the Governor-General in Council, when this attempt failed, they asked the federal Parliament to pass remedial legislation. They also contested the validity of the Act before the Supreme Court of New Brunswick and appealed the latter's unfavourable decision to the Judicial Committee of the Privy Council of England. All of these bodies, however, maintained that the law was constitutional because no legal system of separate denominational schools had existed in the Province prior to Confederation. As a result, the Common Schools Act remained in force.

It is the purpose of this chapter to analyse this controversy and to assess the rôle played by the federal government in it. In doing so it will, of course, be necessary to again answer the question: did a system of separate denominational schools exist by law in New Brunswick before its entry into Confederation?

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2. Great Britain, Statutes, 30-31V., c. 3, s. 93 (1).

The Situation before Confederation

The school legislation in force at the time of Confederation in New Brunswick was "The Act Relating to Parish Schools," which had been passed in 1858. In the only clause which dealt with religion or religious instruction, the Parish Schools Act stated that:

> Every teacher shall take diligent care and exert his best endeavours to impress on the minds of the children committed to his care, the principles of christianity, morality, and justice, and a sacred regard to truth and honesty, love for their country, loyalty, humanity, and a universal benevolence, sobriety, industry, and frugality, chastity, moderation and temperance, order and cleanliness, and all other virtues which are the ornaments of human society; but no pupil should be required to read or study in or from any religious book, or join in any act of devotion objected to by his parents or guardians, and the Board of Education shall, by regulation, secure to all children whose parents or guardians do not object to it, the reading of the Bible in Parish Schools--and the Bible, when read in Parish Schools by Roman Catholic children shall, if required by their parents or guardians, be the Douay version, without note or comment.[3]

Thus, while the Parish Schools Act of 1858 did not make religious instruction obligatory, it did not forbid such instruction if the parents of the children involved did not object. The Roman Catholics had taken advantage of this aspect of the law to introduce religious instruction and devotions into those parish schools which were situated in districts where the population was exclusively Catholic. In other school districts, where the population was not denominationnally homogeneous, but where there were enough people to justify the establishment of several schools, the Roman Catholics had usually managed to secure one entirely Catholic school.[4] It was only in districts where their number was insufficient that the Catholics founded separate denominational schools, that is, schools not governed by the Parish Schools Act. However, these denominational schools received

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3. New Brunswick, Statutes, 21V., c. IX, s. 8.

4. Canada, Sessional Papers, 1873, No.44, 57-61.

special legislative grants.[5] There was no doubt then that to the Roman Catholic population, separate denominational schools did exist, both within and without the parish school system, but they did not constitute a system of education.

The Conflict after Confederation

In a petition signed by the Reverend C. Lefebvre and 537 other citizens of New Brunswick, the Roman Catholic population of New Brunswick asked that the legislation of 1871 be disallowed by the Governor-General. The signatories of the petition contended:

> That under the School Law in force in this Province at the time of the passing of the British North America Act, and up to the present time, Catholics were unabled, wherever their numbers were sufficiently large, to establish Schools in which a good religious and secular education was afforded.
>
> That in the cities and other centres of large populations, for the wants of which the Law did not sufficiently provide, your Petitioners ... erected large and commodious buildings in which they established and maintained Graded Schools, equal in all respects to any Primary Schools existing in these Provinces, and that they received legislative grants to aid in the maintenance of those schools. To these grants they may in most cases be fairly regarded as having a prescriptive right.[6]

The new legislation destroyed these accumulated rights.

Furthermore, although they "consciously disapproved" of a non-confessional or non-sectarian school system, the Roman Catholic population of New Brunswick would be compelled to contribute, nevertheless, to the support of such a system. At the same time, they would have to continue to support their own schools "thus paying twice, while others pay but once." They even stated that "when their numbers or means will not enable them to establish and maintain schools to which they can safely send their children," they would be compelled to allow them "to grow up in ignorance." Thus,

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5. J. Hannay, History of New Brunswick (2 vols; Saint John, 1909), II, 300. In 1871 these grants to Catholic schools amounted to $2,400.

6. Canada, Sessional Papers, 1873, No. 44, 18-19.

they felt that the legislation of 1871 was "a most serious infringement" upon their rights, "a most serious deprivation of the educational privileges" they had enjoyed up to 1871, and "a palpable violation of the spirit of the British North America Act."[7]

The petition sent to the Governor-General was forwarded to Sir John A. Macdonald, the federal Minister of Justice. In his report dated January 20, 1872, Macdonald rejected the arguments of the Roman Catholic minority of New Brunswick.[8] He argued that the acts which were repealed by the new school legislation, applied to parish, grammar, superior, and common schools. He found no reference in these acts "to separate, dissentient, or denominational schools." Nor did he find any statute of the Province of New Brunswick which established such "special schools." He therefore advised that the Governor-General had "no right to intervene."

Macdonald then turned his attention to the second complaint of the Catholics: namely, "that the pecuniary grants" to the separate schools had been abolished. He insisted that the Legislature of New Brunswick had the sole power to deal with public funds. The use of these funds was under the annual supervision of the Legislature, unless by special enactment grants were conferred for a specified period by an act of the Legislature. He felt that annual legislative grants were not the concern of the federal government. Statutory grants, which, in his words, "might be considered in the nature of a contract" might become a federal responsibility if it could be proved that the repeal of the statutory grants were in effect "a breach of that contract." However, he did not find "that any such statutory contract" had been made. In view of this then, Macdonald was of the opinion "that no other course is open to the Governor General than to allow the act to go into operation."

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7. Ibid.
8. Ibid., 19-20

The Debate in Parliament

Educational crises always quickly found their way into the confines of the Canadian Parliament in Ottawa, The New Brunswick school crisis was no exception to that rule. In April 1872 a preliminary discussion took place when the member for Kent County asked that all the correspondence relating to the Common Schools Act of 1871 be tabled. His view that the 1871 legislation was tyrannical and unjust was supported by the member for Gloucester County. T.W. Anglin even argued that such legislation was not compatible with the interests and the welfare of the citizens of Canada. He argued that in view of this, the Dominion government, whose responsibility it was to protect the rights of all classes, should intervene and not treat the question as only a legal one, but as a question of principle involving both policy and justice.[9]

Macdonald, speaking for the Government, disagreed with this view. He repeated the arguments which he had used in his report to the Governor-General on the feasibility of disallowing the New Brunswick legislation. Nor was he able to agree that the legislation was injurious to citizens of Canada who did not live within the Province of New Brunswick. He concluded by saying:

> The constitution which has hitherto worked so easily and so well, could not survive the wrench that would be given if the Dominion Government assumed to dictate the policy or question the decision of the legislatures of the different provinces on subjects reserved by the British North America Act to those legislatures.[10]

Macdonald's position was the one which was accepted by those who favoured non-intervention, although some tended to agree with the Honourable J.H. Gray who felt that it did appear as "lessening the dignity and character of religion to teach it in the same way as a rule of arithmetic or grammar."[11]

On the other hand, those who favoured intervention were divided between those who wanted the federal government to disallow the New Brunswick legislation and those who sought other means to achieve

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9. Canada, House of Commons, Debates, 1872, 197.
10. Ibid., 199-201.
11. Ibid., 759-60.

satisfaction for the Roman Catholic population of that province. Men like Thomas Costigan of Victoria County favoured the former course. It was Costigan who moved on May 20, 1872,

> that an Address be voted to His Excellency, representing: That it is essential to the peace and prosperity of the Dominion of Canada that the several religions therein prevailing should be followed in perfect harmony by those professing them in accord with each other, and that every law passed either by this Parliament or by the Local Legislature, disregarding the rights and usages tolerated by one of such religions is of a nature to destroy that harmony. That the Local Legislature of New Brunswick, in its last Session, in 1871, adopted a law respecting Common Schools, forbidding the imparting of any religious education to pupils, and that that prohibition is opposed to the sentiments of the entire population of the Dominion in general, and to the religious convictions of the Roman-Catholic population in particular. That the Roman Catholics of New Brunswick cannot, without acting unconscientiously, send their children to Schools established under the law in question, and are yet compelled, like the remainder of the population, to pay taxes to be devoted to the maintenance of those Schools. That the said law is unjust, and causes much uneasiness among the Roman-Catholic population in general disseminated throughout the whole Dominion of Canada, and that such a state of affairs may prove the cause of disastrous results to all the Confederated Provinces. And praying His Excellency, in consequence, at the earliest possible period, to disallow the said New Brunswick School law.[12]

Federal assault upon provincial legislation does not appear to have been a principle acceptable to the majority of the members of the House. Other solutions were therefore sought. Some like Alexander Mackenzie, wished to express sympathy for the Roman Catholic population of New Brunswick, while others, like the Honourable P.J. Chauveau, sought 'an amendment to the British North America Act so that "every religious denomination in the provinces of New Brunswick and Nova Scotia shall continue to possess all such rights, advantages, and privileges, with regard to their schools, as such denominations enjoyed in such province" at the time of the passage of the British North America Act.[13] There was no doubt in Chauveau's mind that these "rights, advantages, and privileges" were to be respected "to the same extent as if

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12. Ibid., 705

13. Ibid., 764

such rights, advantages, and privileges had been duly established by law."[14]

After ten days of heated debate, during which Sir Leonard Tilley, the former Prime Minister of New Brunswick and one of the Father of Confederation, threatened to resign,[15] the House accepted the following resolution on May 30, 1872.

> That this House regrets that the School Act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that Province, and hopes that it may be so modified during the next Session of the Legislature of New Brunswick as to remove any just grounds of discontent that now exist, and this House deems it expedient that the opinion of the Law Officers of the Crown of England, and if possible the opinion of the Judicial Committee of the Privy Council, should be obtained as to the right of the New Brunswick Legislature to make such changes in the School law, as deprived the Roman Catholics of the privileges that they enjoyed at the time of the Union in respect of religious education in the Common Schools....[16]

The Reaction in New Brunswick

One day before the House adopted the above mentioned resolution, the Executive Council of New Brunswick sent a lengthy memorandum to the federal government.[17] The memorandum repeated the argument that the legislation was "admittedly within the powers of the Legislature of this Province under the constitution as it exists." Furthermore, the Executive Council refused to admit that there had been in New Brunswick "any legislative compromise on the question of denominational education." Since no such legislation existed, the matter was of no concern to the federal authorities.

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14. Ibid.
15. Public Archives of Canada, Macdonald Papers, L. Tilley to John A. Macdonald, May 25, 1972.
16. Canada, Debates, 1872, 907-08.
17. The quotations from this memorandum which follow are in Canada, Sessional Papers, 1873, No. 44, 47-48.

On the other hand, should the Government and Parliament of Canada intervene, the Executive Council wanted to warn them that the consequences "far outweigh in importance the particular subject involved." The attempt by the federal government to impose "further limitations" to the powers of the provincial Legislature was "subversive of the federal character of the union, tending to the destruction of the powers and independance of the Provincial Legislatures, and to the centralization of all power in the Parliament of Canada." The people of New Brunswick, the report went on, would never surrender their rights "of self-government within the limits of the Constitution." Consequently, any interference by the federal government would be considered "as an infringement of the Constitution." In conclusion, therefore, the New Brunswick government warned:

> The Government and Parliament of Canada of the danger involved in the passage of the said Resolution, which if passed, whatever its effect upon the course of Imperial Legislation, must stand as a precedent of innovation of Provincial rights, fruitful of evil: and in the name of the people of New Brunswick, and invoking the protection of the Constitution, the Executive Council in Committee protest against the passage of such Resolution, and emphatically assert the right of the Legislature of New Brunswick to legislate upon all questions affecting the Education of the country, free from interference by the Parliament of Canada.

Federal Action.

This memorandum underlined the federal government's policy of non-intervention. However, the federal government still had to act in accordance with the resolution which the House of Commons had accepted on May 30, 1872. Consequently, at the beginning of November 1872, the federal government asked the Law Officers of the Crown in England to ascertain if the New Brunswick school matter came within the terms of Section 93 of the British North America Act. At the end of November, the Law Officers of the Crown wrote to the Secretary of State for the Colonies, the Earl of Kimberley, that:

> We agree substantially with the opinion expressed by the Minister of Justice of the Dominion, so far as appears from the papers before us, whatever may have

> been the practical working of annual Education Grants in the Province of New Brunswick, the Roman Catholics of that Province had no such rights, privileges, or schools as are the subjects of enactment in the British North America Act, 1867, Section 93, Subsection 2, et Seqr.
>
> It is of course quite possible that the new Statute of the Province may work in practice unfavourably to this or that denomination therein, and therefore to the Roman Catholics, but we do not think that such a state of things is enough to bring into operation the restraining powers or the powers of appeal to the Governor General in Council, and the powers of remedial Legislation in the Parliament of the Dominion contained in the 93 Section. We agree, therefore, in the practical conclusion arrived at by Sir John A. Macdonald.[18]

This document prepared at the end of November was not dispatched to Canada until February 18, 1873.

On March 13, 1873, at a meeting of the Cabinet, a report was adopted which referred to the New Brunswick school legislation. This report advised that the entire matter be laid again before the Attorney and Solicitor Generals of Canada so that the whole question might be reconsidered. The reasons for this were, in the words of the report:

> That without such reconsideration, the Roman Catholic body might feel that the opinion had been given without their case being submitted or considered, and it would not therefore have the weight with them that is desirable.[19]

Catholic Reactions

While the question was being debated in Ottawa and studies were being made in London, the Catholics of New Brunswick did not abandon their struggle. In 1872, Auguste Teneaud, the member for Kent County, and several other Roman Catholics refused to pay their school assessments. They maintained that it was not necessary for them to pay these taxes

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18. Ibid., 63
19. Ibid., 66-84.

since the Act was unconstitutional. The matter was taken through the courts and finally, in February 1873, the Supreme Court of New Brunswick delivered its judgement in which it rejected the contention of the plaintiffs and upheld the constitutionality of the school law.[20]

During this period, the federal elections of 1872 were held. The question of the New Brunswick schools was uppermost in everybody's mind.[21] In fact, the Programme catholique which had been enunciated in 1871, and which was devoted to the maintenance of the rights of the Roman Catholic Church, had been to a certain extent, inspired by the difficulty in New Brunswick. Much agitation followed in the Province of Quebec where every candidate promised redress to the Roman Catholic minority of New Brunswick. However, the majority of the Roman Catholic bishops of Quebec and of Canada did not intervene; either because the bishops of Quebec feared a Liberal victory, or because the Catholic episcopacy did not view New Brunswick's legislation as unconstitutional. Although the Conservatives were returned in the Province of Quebec, they lost seven seats, notably that of Sir George-Etienne Cartier. No doubt other issues influenced the voters in Quebec, but the New Brunswick school crisis was certainly important.

The Conflict after 1872

After the elections of 1872, the question of New Brunswick's school law made its second appearance in the House of Commons in 1873. The indefatigable Mr. Costigan of Victoria County again introduced a resolution demanding federal intervention. Unlike its predecessors, this resolution went beyond the original School Act of 1871,

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20. Ibid., 66-84

21. Laurent Olivier David, Histoire du Canada depuis la Confédération, 1867-1887 (Montréal, 1909), pp. 45-51, 60-63,95-99; Robert Rumilly, Histoire de la Province de Québec, (32 vols.; Montréal, 1940-59), I, 179-84, 225-28, 312-14.

since it included certain subsidiary legislation which had subsequently been passed to implement that act.[22] The debate followed lines similar to those of the debate of 1872, but the result was quite different. On May 14, 1873, Costigan's resolution was carried by a vote of 98 to 63 against the Government.[23] However, the Governor-General refused to comply with this resolution and applied for instructions to the Government of England. The Colonial Secretary, acting once again upon the advice of the Law Officers of the Crown, informed the Governor-General that he could not intervene because the laws referred to in the resolution were all constitutional.[24] Thereupon, the federal Parliament at the request of the Government, voted a sum of five thousands dollars to defray the expenses of any New Brunswick Catholic who might wish to appeal the question to the Judicial Committee of the Privy Council in England.[25] In a decision rendered in 1874, the Judicial Committee of the Privy Council declared the Common Schools Act of New Brunswick to be intra vires.

Shortly before this decision, a provincial election was held in New Brunswick. The School Act was the main issue and only five of the forty-one candidates elected were supporters of separate schools. The question still attracted some attention during the federal electoral campaign of 1874. Although the scandal, known as the Pacific Scandal, was the most vital issue in the election of 1874, the New Brunswick school problem was nevertheless important. In the Province of Quebec, candidates pledged themselves once again to use their influence to redress the plight of the minority in New Brunswick, without being specific about the means to be employed. There was also some discussion of the matter in other provinces.

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22. Canada, Debates, 1873, 176.

23. Ibid., 179.

24. Ibid., 194.

25. Ibid., 206, see also K.F.C. MacNaughton, The Development of the Theory and Practice of Education in New Brunswick (Fredericton, 1947), pp 200ff.

When Parliament reassembled in 1875, the question was again debated in the House. Costigan led the battle once more. He moved a resolution in which he suggested an amendment to the British North America Act, whereby separate schools were to be established for the Catholics of New Brunswick who would also be exempted from taxation for the support of the public schools. The Liberal Government of Alexander MacKenzie was of course much embarassed by this entire problem. On the whole, the Government felt that it could not intervene since the people of New Brunswick had demonstrated their assent to the School Act of 1871 in the provincial election of 1874. Furthermore, the constitutionality of the Act was no longer in question.[26]

Joseph Cauchon, the able minister from Quebec, agreed with the Government's point of view. However, he did admit to a want of foresight in the framing of the educational process of the British North America Act. Separate schools were secured in effect only in Quebec and in Ontario. Cauchon argued that had the Catholics of New Brunswick understood that their school privileges would be ended four years after Confederation, they certainly would not have agreed to Confederation any more than the Catholics of Quebec would have. As a gesture, Cauchon suggested a humble address to the Queen so that she might use her authority with the people of New Brunswick to effect redress to the grievances of the Roman Catholic population of that province.[27] And that is where the matter rested: nothing was done and everything was left to the discretion of the majority of New Brunswick.

Conclusion

The Parish Schools Act of 1858 had not established a denominational and separate school system. It had merely sought to respect the religious convictions of different groups within one common school system. While denominational schools did exist in the Province of

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26. Canada, Debates, 1875, 555-80.

27. Ibid., 609-34.

New Brunswick prior to Confederation, they existed solely because demographic accidents had given rise to certain practices which were generally accepted. The schools existed by custom, not by law.

The Common Schools Act of 1871 made it impossible for such an arrangement to continue in the future. It did not deprive any group of its legal and constitutional rights, although it wrought a great hardship on one-third of the population of New Brunswick.

For this reason, the political and judicial authorities in Fredericton, Ottawa, and London, saw fit to declare the Act of 1871 as constitutional under the British North America Act and refused to assent to the demands of the Catholics of New Brunswick. It is difficult to see how they could have done otherwise.

Yet, it may be stated that there was much value in P.J. Chauveau's original request for an amendment to the British North America Act and also in Costigan's 1875 resolution. Possibly a return to the terms of reference used during the constitutional conferences in London could have been achieved. Then, federal protection could also have been given to those denominational schools which existed by custom before Confederation. However, it is well to remember that the popularity of the notion of a non-sectarian school system made the realization of this politically impossible. It might have been another story had the schools been divided by language.

CHAPTER II

THE PRINCE EDWARD ISLAND SCHOOL CRISIS OF 1877

Introduction

In 1877, the General Assembly in Prince Edward Island, after a lengthy and frequently acrimonious debate, passed an act entitled: "The Public Schools Act." During the ensuing months, three provisions of the Act became the basis for a violent controversy. The Act provided for only a non-sectarian school system, and at the same time, it stipulated that parents who did not send their children to these non-sectarian public schools would be liable to a fine or a supplementary school assessment. Thirdly, it failed--as it had in 1868--to make any provisions for the teaching of the French language or for the granting of special government allowances for the payment of French teachers.[1]

For the most part, the Roman Catholic minority of Prince Edward Island opposed the Act on the grounds that it was unjust and unconstitutional. Under the leadership of their spiritual leader, the Right Reverend Peter McIntyre, Bishop of Charlottetown, the Catholics attempted to fight the legislation.

In a petition sent to the Governor-General, the Earl of Dufferin, 18,000 Catholics insisted that the legislation of 1877 was unacceptable because they felt:

> that education should not and cannot be separated from instruction in the verities in theChristian faith, and, so believing, they have, throughout the province, at their own expenses, built and maintained schools where secular teaching becomes education by being based upon religious instruction.

The Catholics felt that they must submit to the Act of 1877 since, as they stated, "a majority possessed the power of imposing upon a minority," even an act of injustice.

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1. Prince Edward Island, "The Public Schools Act of 1877," The Acts of the General Assembly of Prince Edward Island, 1875-1879, V, 1-47.

However, the Catholics recognized that the statute introduced what they called "a new and unheard of principle." In effect, they argued, the legislation of 1877 made "it a crime punishable by fine and imprisonment, for your memorialist to send their children to their own schools, rather than to those established under its provisions." Since the Act stipulated that if 50 per cent of the children of school age within a school district did not attend the non-sectarian public schools, parents who, by refusing to send their children to the public schools, caused a number of scholars to fall below the average required by the law, would be fined. The Catholics had no doubt that the effect of these stipulations would be to impose double taxation upon the Catholic population of the province. For all these reasons, the Catholics therefore argued in their petition that the law of 1877 was unjust.[2]

Beside this question of injustice to the Roman Catholic population, many argued that the Act of 1877 was unconstitutional since it was a direct violation of Section 93 of the British North America Act. The Catholics believed that the Educational Act of 1868 had created a separate school system which was not respected by the legislation of 1877. Therefore, they asked the Governor-General in Council to disallow the legislation of the General Assembly of Prince Edward Island.

However, on the grounds that no system of separate schools existed in Prince Edward Island prior to Confederation, the federal government refused to disallow the Public School Act of Prince Edward Island of 1877. The Act was therefore left in operation.

The purpose of this chapter is to assess whether separate schools existed by law in Prince Edward Island prior to the entry of that province into Confederation. At the same time, an examination will be made of the reasons why the Federal Government chose to answer the question in the negative.

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2. Canada, Sessional Papers, 1894, No. 406, 3-4.

The Situation before Confederation

As elsewhere in Canada, the Prince Edward Island School crisis of 1877 was not an isolated phenomenon. It was in fact the continuation of a debate which had begun during the years preceding Confederation. At that time, educational questions had divided the population of Prince Edward Island into two hostile camps and by 1859 the school question had assumed a dominant position in the politics of the Island and for the next twenty years, it served as the main platform of all political parties. So violent was the arguement that political parties became little more than religious groupings: the Catholics relying upon the Liberals to serve their cause while the Protestants supported the Conservatives. As Francis Bolger has so well remarked, the school question seemed to be endowed with a "magic charm. No matter what other problems might be raised, it was always a force to be reckoned with at every fresh appeal to the electorate."[3] No doubt, it was because of this that in the election of 1873, educational matters overshadowed the terms of Prince Edward Island's entry into Confederation as an issue.

Again, as elsewhere in Canada, the essential element of the whole problem centred around the allocation of public funds to religious schools, in this case, Roman Catholic schools. Bishop McIntyre had founded the schools and they had been maintained by the sacrifices of the Roman Catholic population. Catholic nuns and brothers taught in them and the teaching of the catechism was an important feature of their curriculum.[4] Over the years, the Catholic population of the Island insisted on government subsidies for their schools on the grounds that they relieved the public schools of the responsibility of educating over 500 students. On the other hand, the Protestant population refused to allow official recognition to the

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3. Francis W.P. Bolger, Prince Edward Island and Confederation 1863-1873 (Charlottetown, 1964), p.257.

4. The History of the Catholic Church in Prince Edward Island (Quebec, 1913) pp. 227-81.

existence of any sectarian schools for, they claimed, such an action would merely lead to increased religious conflicts.

The passing of the Educational Act of 1868 marked the end of one phase of the dispute and the beginning of a new one. The "Act to Consolidate and Amend the Several Laws Relating to Education, 1868" is of particular significance, since it governed education in Prince Edward Island until 1877.[5] It was thus in force at the time of the Island's entry into Confederation.

In the only clause directly concerned with the teaching of religion, the School Act of 1868 was a victory for the Protestants. Within a Christian framework, its stipulations were strictly non-sectarian:

> The introduction of the Bible to be read in all the public schools in this Island, of every grade, receiving support from the public treasury, is hereby authorized, and the teachers are hereby required to open the school on each schoolday with the reading of the Sacred Scriptures, by those children whose parents or guardians desire it, without comment, explanation, or remark thereupon by the teachers; but no children shall be required to attend during such reading as aforesaid, unless desired by their parents of guardians.[6]

By Section 31, the Act declared that no school was eligible for financial assistance from the Board of Education unless the books, regulations, and curriculum conformed to the various sections of the Act and the regulations of the Board. Since the entire legislation was unacceptable to Roman Catholics, their schools were excluded from all the benefits conferred by the Act.

If the general sections dealing with the establishment of a non-sectarian school system were explicit, this cannot be said for

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5. Prince Edward Island, "An Act to Consolidate and Amend the Several Laws Relating to Education, 1868", The Acts of the General Assembly of Prince Edward Island, 1863-1868, III, 284-321.

6. Ibid, Section 71.

the sections which dealt with what is called the "Anglo-Rustico School District." This district contained a large segment of French-speaking Acadians. These were, of course, Roman Catholics. By Section 39 of the Educational Act of 1852, a French-Acadian teacher, who produced a certificate from his parish priest that he was a member of a Roman Catholic congregation, could receive a certain salary if he was capable of teaching certain subjects and had taught them in the past. In this way Acadian schools were recognized in 1852.

However, between 1852 and 1868, the educational legislation of the Island swept away this recognition. For instance, in 1854, the educational law was amended imposing upon French-Acadian teachers the responsibility of opening English classes for instruction in reading, writing, and arithmetic. In return, these added responsibilities increased the teachers' salary by five pounds a year. For the next few years, various regulations of the Board of Education and legislative amendments to the Educational Acts decreased the importance of the French-speaking teachers. The final blow came in 1863 when a new law passed in which the recognition given to the French-Acadian teachers as a distinct category withdrawn. By Section 6 of that Act, the Legislature insisted that "it was inexpedient to grant government support any longer to Acadian teachers as such" and thus removed from them any special privileges they might have enjoyed in the past.[7] Consequently, by the time the legislation of 1868 was passed, it cannot be said that there were any French-Acadian schools.

However, the matter is not so easily solved. The legislation of 1868 recognized the fact that a second school had been established within the Anglo-Rustico School District. The Prince Edward Island Legislatures order that the two schools "shall be continued as now

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7. Canada, Sessional Papers, 1894, No. 40B, 13-14.

in operation." Furthermore, the Board of Education was authorized "to divide and order the said districts in such way and manner as deemed expedient, so as to meet the exigency of the case, anything herein contained to the contrary not withstanding." Yet, the law insisted that no recognition could be given to a teacher in charge of any such school or schools in the said Anglo-Rustico District who had not obtained a license as a first- or second-class teacher from the Board of Education and who did not comply with the provisions of the Act.

Furthermore, the Act made special provisions for the payment and certification of French teachers. Section 72 of the School Act of 1868 reads as follows:

> Any teacher, male or female, who shall in addition to the qualifications required by this Act, be qualified to teach the French language, and who shall have taught in his school, French, to a class of not less than ten people, shall, on producing from the Board of Education a certificate of his competency to teach the French language, be entitled to receive five pounds over and above the salary to which such teacher may be entitled under this Act, provided the trustees of such school district do raise the like sum of five pounds for such a teacher by voluntary subscription from the inhabitants, and provided further that the number of teachers receiving the afore said increase of salary shall not amount to more than twenty.

Since the Act of 1868 granted official recognition to a second school in the Anglo-Rustico School District and since special provision was made for a French-language teacher, the Roman Catholic and French-speaking Acadian population of that district were in a favoured position. As a matter of convenience and of deliberate choice, the Acadians of the district readily availed themselves of the opportunity of having all their children attend one of the two schools. In this way, they obtained a French-speaking Catholic teacher for their children. As James C. Miller has remarked, "such segregation of children on the basis of race and religion was never prescribed nor prohibited by the laws or regulations."[8] It can therefore be said that under the legislation of 1868, which was in effect at the time of

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8. James C. Miller, National Government and Education in Federated Democracies Dominion of Canada (Philadelphia, 1940), p. 104.

Prince Edward Island's entry into Confederation, schools which were not Protestant nor English-speaking could be established.

The Conflict after Confederation.

Yet, a single school cannot be said to constitute a system. It was no doubt in recognition of this that the Catholic population of the Island persisted after 1868 in its demand for subsidies for its schools, but with little apparent success. So little success did they achieve that when delegates of the Island went to Ottawa in 1873 to discuss that Province's entry into Confederation, they remained strangely silent on their educational controversy.

This silence annoyed certain Quebec members of the Canadian Parliament who feared that should Prince Edward Island enter Confederation without adequate protection for the Roman Catholic minority, nothing could be done thereafter. They therefore wired Bishop McIntyre informing him of the silence of the Island's delegates and insisting that something be done.[9]

His Lordship decided that the time had come to ask the Province for a separate school system. In order to obtain his demand he advised the Catholic members of the local Legislature to vote against Confederation if such a law were not passed. However, nothing came of his efforts and the Province entered Confederation without any change having been made in its school legislation.

Although Bishop McIntyre issued lengthy pastoral letters calling for the establishment of a system of separate denominational schools, the situation remained unaltered until the passage of the Public Schools Act of 1877. The Act flatly declared that "all schools conducted under the provisions of this Act shall be non-sectarian."[10] It further stipulated that parents who by not sending their children

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9. Macmillan, History of the Catholic Church in P.E.I., pp. 353-54

10. Prince Edward Island, "The Public Schools Act of 1877, "The Acts of the General Assembly of Prince Edward Island, 1875-1879, V, 1-47, Section 92.

to public schools caused the average attendance of those schools to fall below 50 per cent of the school-aged children of the district, should n subjected to a special assessment.[11] Thirdly, the Act made no special provision for the teaching of French, not did it mention the Anglo-Rustico School District.

These provisions were of course unacceptable to the Roman Catholic population of the Island. They sought, therefore, to have the Act reserved by the Lieutenant-Governor of the Island. Failing this the Catholic population were prepared to take their case to the Governor-General in Council in accordance with Section 93 of the British North America Act.

It is interesting to note that the argument used by the Catholic minority of Prince Edward Island was based on an injustice to the French-speaking portion of that population. By insisting that the Act of 1877 "prejudically affects the 'right or privilege' of the French population of this Province,"[12] the Roman Catholic population of Prince Edward Island agreed that the Roman Catholic schools in existence in the Province were also French-speaking and did not constitute a separate denominational system of education parallel to the non-sectarian one. In a letter dated April 17, 1877, and adressed to Sir Robert Hodgson, Lieutenant-Governor of Prince Edward Island, Bishop McIntyre stated:

> Against this Bill, I appeal to the governor general in council. To allow this Act to go into operation at once, with all the cumbrous and expensive machinery necessary for the working of its provisions, will be to close the separate schools of the French population which I seek to save, and deprive them of the benefits of education which I am striving to secure for them, and this would be a grave and serious evil I desire to avert.[13]

The Bishop's case rested principally on the question of the favoured position of the French-speaking Roman Catholic schools

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11. Ibid., Sections 15 and 16.
12. Canada, Sessional Papers, 1894, No. 40b, 1.
13. Ibid.

in the Anglo-Rustico District. By 1877, there were 31 such schools.[14] In these schools, the Bishop claimed, teachers used Catholic textbooks and parish priests taught the Catholic catechism. There was no doubt in his Excellency's mind that these practices conformed to the provisions of the various educational acts of Prince Edward Island, especially that of 1868. He argued that Section 103 of the 1868 legislation required teachers of the Anglo-Rustico District to comply with the provisions of the Act relating to district teachers "but not teaching." He explained that this difference was made "in order that the teaching might be under the direction of the parish priest, and that such books might be introduced as he might think advisable." The books used in these schools were those which were used in the French-speaking Roman Catholic schools of the Province of Quebec. There was no doubt in the Bishop's mind that although the teachers of the Anglo-Rustico Schools had to obtain a license from the Board of Education, they were exempt "from the rules of teaching incumbent upon the teachers in English schools." The Bishop admitted that these provisions applied only to the French-speaking Roman Catholic schools, thus agreeing that privileges were denied to "their Irish and Scotch co-religionists."[15]

Even though Bishop McIntyre stated that the "French valued very highly these schools" and found it difficult to describe "their amazement and distress," he appeared to have had reservations about the French-speaking population's ability and/or willingness to protect its own interest. He feared that the French would send their children to the new schools thus providing an opportunity for the provincial government to claim that the French "do not value their own schools." To prevent this and to provide even further "for the welfare and the protection of my French people," he ordered parish priests to tell their flock "not to send their children to the schools about to be opened under the new system."[16] Meanwhile, with indefat-

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14. Ibid., 5.

15. Ibid.

16. Episcopal Archives of Charlottetown, Peter McIntyre Papers, McIntyre to a parish priest, August 1, 1877.

igable energy, the Bishop travelled several times to Ottawa to plead his case.

The Position of the Provincial Government.

While the Bishop fought, the Government of Prince Edward Island was not idle. On June 30, 1877, the Executive Council met to prepare its case for the guidance of the Governor-General in Council to which the 1877 legislation had been referred.[17] Since the case of the Roman Catholics rested largely upon the development in the Anglo-Rustico School District, the Executive Council in committee stated that if separate schools existed in that district "they exist in defiance of the law, and without the knowledge of the government, or of the education authorities." The Council further insisted that no public schools in Prince Edward Island existed at the time of Confederation, "or since then, which legally had any of the rights or privileges now claimed for the school designated in the petitions as Anglo-Rustico Schools." However, the Government did admit that in many of its schools, especially those attended by the children of one denomination only, "the law, with respect to the books to be used, has been, to a limited extent, evaded."

In its conclusion, the Council insisted that it was not guilty of injustice towards anyone. The Executive Committee only wished "to carry into effect a good education law, under which the children of all classes of the community may receive such an education as will fit them for the battle of life." Like everyone else in Canada who has favoured a non-sectarian public school system, the Government of Prince Edward Island argued "that the policy of the holding of all religious bodies on an equal footing so far as the state is concerned, giving no privilege to the one which are witheld from the other, but treating them all with justice, is the only one which can bring about a peaceful

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17. Canada, Sessional Papers, 1894, No. 40b, 9-15.

settlement of this great question." It had been returned to office to carry out the establishment of a free non-sectarian school system. The Government concluded that the Public School Act of 1877 was "the result of their labours," and it submitted that this Act was within the constitutional powers of Prince Edward Island and did not "in the slightest degree" violate the provisions of the British North America Act of 1867, nor did the Act deprive "any person or class of any legal privilege which they possessed at the time this province entered into Confederation."

In a separate memorandum attached to the minutes of the Executive Council of Prince Edward Island, dated June 30, 1877, the Attorney General of that Province took great pains to explain what was meant by the provision concerning the French-speaking language in legislation of 1868.[18] In the first place, he stated that there had never been any intention to create French-speaking schools. The law merely entitled any teacher qualified to teach the French language to receive a bonus of five pounds, should certain qualifications be met. This was nothing else, according to the Attorney General, but an inducement to teachers "to improve themselves by acquiring a knowledge of French, and teaching that language to their scholars." This had no reference to any class of citizen. In fact, as the Attorney General reported, the provision was not confined "to either the teachers or the scholars of French nationality only, but to anyone else who desired to qualify." There was no doubt in his mind that any attempt to interpret this section of the 1868 legislation as granting a "legal right or privilege" to the French-speaking Roman Catholic minority of Prince Edward Island, was inadmissible "in the light of the practical construction it has received."

However, it is well to remember that the Attorney General stated the following: "the fact that the French portion of the population

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18. Ibid., 15-17

lives in settlements or villages, by themselves, naturally resulted in their schools being separate in the sense of being attended solely by French children...." He admitted that under these special circumstances, the teaching in these schools "was not strictly in comformity with the law." He even wrote that French-speaking schools would continue to exist under the new Act. However, this fact should not be interpreted to convey the impression that the legislation of 1868

> authorized or sanctioned any school as a separate school in the popular sense, in which the religious views or tenets of any religious body could legally be taught, or books, other than those authorized by the board of education....

Federal Action

The legislation of 1877 came into effect on July 1877. However, it was not until November 15 that the Secretary of State of Canada sent to the Lieutenant-Governor of Prince Edward Island a copy of the following order of the Governor-General in Council, dated November 12, 1877:

> The Committee of the Privy Council have had under consideration the report hereunto annexed, from the Honourable minister of justice, on the act passed by the legislature of Prince Edward Island, at its last session, entitled 'The Public Schools Act, 1877," and for the reasons therein given they respectfully advise that the said act be left to its operation, and that a copy of the said report and of this minute be transmitted for the information of the lieutenant-governor of Prince Edward Island.[19]

The order-in-council was of course based on the report of the Minister of Justice which was dated November 8, 1877. The Minister of Justice at that time was Rodolphe Laflamme. Laflamme had founded the Institut Canadien, had been an editor of L'Avenir and had defended the interests of Mme Guibord in the famous Guibord case. He was one of the leaders of the parti rouge in Quebec. As such,

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19. Ibid., 24.

he was a foe of clerical influence in education. At the same time, he was an indefatigable defender of French-speaking minority rights in the whole Dominion. However, by the time he became Minister of Justice, in June 1877, the parti rouge had changed its direction largely because of the founding of the parti national. It is impossible to say how he felt about the decision he had to make. The matter does not seem to have been important enough to warrant a debate in the House.

In his memorandum of November 8, Laflamme addressed himself to the main question: whether there were or whether there were not, at the time of Prince Edward Island's entry into Confederation, "denominational schools, with respect to which certain classes of persons had rights or privileges and that these privileges should have been secured by law."

To answer the question, he had of course to deal with the Anglo-Rustico schools. After quoting the relevant sections of the 1868 legislation, he wrote:

> It must be observed that all previous laws were abolished by the statute of 1868, that the only provision which can be invoked in support of the proposition that the Anglo-Rustico schools were denominational, is that these sections 103 and 104 (Act of 1868) mention them and allow them to be continued as then in operation, but the reason mentioned for their continuance is not that they offered a different system of education but because one school was found insufficient to afford the means of education....
>
> I find it impossible to discover in these two clauses anything which could justify the claim of the Bishop to secure the right to denominational teaching in such schools....

Laflamme felt that the Bishop and his supporters argued in such a way as to show that:

> although there was not in existence any statutory provision empowering the catholic community to establish and maintain separate schools, and notwithstanding that there was in existence express statutory provision to the contrary, they could, because such schools had been virtually in operation, call on the federal government to prevent the legislature from establishing any regulation with respect to the schools generally without securing to them the right of maintaining separate and denominational schools.

> Nothing can be found in the statutes that justified such a proposition.[20]

He thus concluded that the Anglo-Rustico schools were not "denominational by law." Whether they were by toleration and usage, as Bishop McIntyre claimed, was not a point at issue since federal interference could only be claimed if citizens felt deprived of rights which existed by law at the time of union.

If the Anglo-Rustico schools were not denominational, did they constitute a French-speaking system of education "as distinct from a denominational separate school system" existing by law at the time of union? If the answer was in the affirmative, then the legislation of 1877 had deprived the French-speaking population of Prince Edward Island of a fundamental right which existed at the time of union, and thus the federal government was bound to act. Although the question was important, Laflamme did not devote much time to it. He admitted that there was evidence to show that "a different course of instruction" was followed in these French schools.

Secondly, he was also aware that the educational authorities and the general public knew of this situation and tolerated it. But these schools were public, according to the 1868 statute, only by virtue of their being in accord with the laws and regulations of the Legislature of the Board of Education. In other words, the schools were carried on "independently of the provisions of the statutes." As such, there was no doubt that there was no "legal recognition to these schools."[21]

Finally, he took up the matter of the fines and double taxation which were to be imposed on parents who sent their children to Catholic schools. He found the law severe and arbitrary. But, as he stated:

> If we are bound to consider the right of regulating education as absolutely appertaining to each province, except where the privilege of establishing separate schools existed by law, it must be admitted that they have equally the right to

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20. Ibid., 33.

21. Ibid.,

> attach to the provisions of such laws the conditions and penalties required to secure its object....

Regardless of the injustice perpetrated, the Minister of Justice had no choice but to conclude that "it would not seem proper for the federal authorities to interfere with the details or the accessories of a measure of the local legislature, the principles and objects of which are entirely within their province." He ended by recommending that the Act "be left to its operation."[22]

Conclusion

The only possible reason for disallowing the Prince Edward Island statute of 1877 was that it destroyed a system of denominational schools which was in existence at the time when the Province joined Confederation. However, no such claim could be made in favour of denominational schools. The educational statute of 1868 by referring to the Anglo-Rustico schools clearly intended to authorize administrative changes within certain school districts. The statute never wished to alter the nature of the non-sectarian system of education which prevailed in the Province. Even the leader of Roman Catholic education, the Bishop of Charlottetown, admitted this indirectly when he issued a pastoral letter *after* Confederation, calling for the establishment of a system of separate denominational schools.

It must also be concluded that French-speaking Roman Catholic schools did not exist by *law* at the time of the entry of Prince Edward Island into Confederation. That such schools existed by usage and tradition--or by custom--there can be no doubt. However, these schools did not constitute a system of education and were not recognized by law. The matter of the Prince Edward Island schools suggests once again that had the expression "by custom" been maintained in the British North America Act, many such difficulties would have been avoided.

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22. *Ibid.*, 34.

It is also difficult to escape the conclusion that had French-Canadian educational rights outside Quebec not been intimately linked with those of religion, other conclusions might have been reached. Laflamme did not pay much attention to the linguistic problem. The French-speaking character of these schools was considered, but it was always secondary to the denominational character. It was generally accepted that separate schools existed in Prince Edward Island, but they were separate by virtue of language, not by virtue of faith.

CHAPTER III

THE MANITOBA SCHOOL CRISIS, 1870-96*

Introduction

In 1890, the Legislature of the Province of Manitoba passed important amendments to its educational legislation. These legislative changes gave rise to one of the most important crisis in Canadian history. The Roman Catholic population of Manitoba, mostly French-Canadians, felt deprived of the educational rights which the legislation enacted when Manitoba became a province of Canada in 1870 had granted them. They therefore set about to change the new regulations.

It is the purpose of Chapter III and IV of this study to look at this particular crisis. Chapter III deals with it up to 1896 and Chapter IV is concerned with the solution attempted after the election of 1896.

The Manitoba Act, 1870

When the Province of Manitoba was created in 1870, the federal Government granted the supervision of education to the Province with the proviso that the rights of "denominational schools which any class of persons have by law or practise in the province at the union" not be disturbed. If the minority ever felt deprived of its privileges, the Manitoba act stipulated that it could appeal to the

* Most of the material in this and the following chapter is taken from Laurier L. LaPierre, "Politics, Race, and Religion in French Canada: Joseph-Israel Tarte" (unpublished Ph.D. thesis, University of Toronto, 1965), Chapter V.

Governor-General in Council. The federal Government reserved to itself the authority to ask Parliament "to make remedial laws for the due execution of the provision of this section" if the provincial Legislature of Manitoba ever interfered with the rights of any minority in this matter.[1] The Manitoba Act therefore gave unqualified protection to the separate schools. In 1893, Alexandre Taché, the Archbishop of St. Boniface, who was closely involved in the negotiations which led to the creation of Manitoba, recalled that in 1870 everyone had understood clause 22 of the Act to mean just that.[2]

However, by 1890 the population of the Province had altered considerably. The recent immigrants were largely Protestant, and the Roman Catholics soon found themselves in a minority. The Protestants had always had reservations about the dual school system. They felt it was cumbersome and expensive, especially in remote and sparsely populated areas and they believed it fostered religious divisions which could be inimical to the unity and equality they wished to achieve. In the twenty years following the establishment of Manitoba the Protestants did not agitate extensively for the abolition of the separate school system, but their opposition lay very near the surface and could easily be aroused.

The Anti-Catholic Campaign

Honoré Mercier, the Premier of the Province of Quebec, provided the spark which ignited the Manitoba Schools' controversy with his Jesuits' Estates Act of 1889. At that time Mercier had attempted to find a solution to the continuously vexating problem of providing an adequate remuneration for the properties of the Jesuit Fathers which had been confiscated at the time of the Conquest. Since 1867, various provincial administrations, which had inherited the

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1. Canada, Statutes, 33V., c.3, s.22.
2. Alexandre Taché, Une Page de l'histoire des écoles du Manitoba: Etudes des cinq phases d'une période de 75 années (St. Boniface, 1893), p.38.

problem, had attempted to find a solution, but the disagreements between the Bishops of the Province and the Jesuits made this impossible. To insure the acceptance of his proposals by the religious authorities, Mercier asked the Pope to divide the money paid by the provincial treasury. Many disagreed with Mercier's legislation on the grounds that the Pope, a foreign power, was supplanting the authority of the Crown, that the provincial treasury was being depleated to compensate individuals who had no legal right to restitution, and that the secularization of the Clergy Reserves had settled the question of clerical estates some forty odd years previous.

An anti-Catholic crusade was launched, led by Dalton McCarthy. In May 1889 the Liberal Brandon Sun, demanded the abolition of Manitoba's separate school system and in June and July the cry was taken up in other newspapers. The Manitoba Government, which had been involved in a series of political scandals and was preoccupied by the cost of education, seized the issue with surprising alacrity. At the beginning of August it announced that a uniform, non-denominational school system would be established, with a single Department of Education and a minister responsible to the Legislature. The Government argued that economy was necessary and that the Roman Catholics were in a privileged position since their schools received more subsidies from the public treasury than the number of their population warranted.

However, before the validity of this financial argument could be established or denied, the issue became largely religious and racial. McCarthy made a fiery speech at Portage la Prairie on August 5, 1889. At the same meeting, Joseph Martin, the Attorney-General of Manitoba promised that the French language would also be abolished in the Province. In the session of 1890, the Manitoba Legislative Assembly passed a law which abolished the official use of the French language and at the same time denied the French in Manitoba the right to a French jury in any provincial court.[3] In the same session, the Legislature

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3. Manitoba, Statutes, 53V., c.14; 53V., c.3, s.9.

replaced the dual school system with a non-denominational one.[4] Roman Catholic schools could still function as private schools but they would no longer be supported by the public treasury, and all Manitoba citizens would pay a school tax to support the public school system.

Reactions outside Manitoba

The initial reaction outside Manitoba to the new legislation was relatively mild. The Roman Catholic bishops and the Liberals both agreed that the Manitoba laws should not become an issue in the federal election of March 1891. Shortly before the campaign the bishops of the Province of Quebec, with the knowledge of Archbishop Taché of St. Boniface, were preparing a collective letter "pour but de diriger les catholiques dans le choix des Députés qui /s'engageront/ à faire rendre justice aux catholiques du Manitoba." A priest close to the Archbishop saw Adolphe Chapleau and told him what the bishops proposed to do and suggested that Chapleau give Taché guarantees to prevent publication of the letter "dans l'intérêt du gouvernement." Acting on this advice, Chapleau visited Archbishop Taché, who was then ill in Montreal, and prevailed upon him not to agitate during the campaign. In return Chapleau gave the Archbishop "both private and formal pledges" that after the election, the federal government would definitely remedy the plight of the minority.[5] Consequently the French-Canadian Mandement written in March 1891 but published on April 5, 1891 was only a vague document which stated the Church's opposition to neutral schools and asked all to pray and work for redress and "/de/ s'affirmer les enfants soumis et dévoués de l'Eglise."[6] Nor did the Canadian episcopacy ask that the Manitoba schools' legislation be disallowed in their letter to the Governor-General in Council sent the day after the

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4. Ibid., 53V., c.37.
5. Canada, Debates, 1893, I, 1758.
6. Mandements, lettres pastorales, circulaires, et autres documents publiés dans le Diocèse de Montréal depuis son érection (13 vols.; Montréal, 1887-1926), II, 489.

election.[7]

For their part the Liberals encouraged the Conservative Government to postpone any action. In the session of 1890, Edward Blake proposed that educational questions arising out of provincial statutes should be settled by the courts.[8] His motion was passed unanimously.

Federal Action

The Conservative Government, which had until April 11, 1891 to disallow the Manitoba legislation, agreed that delay was the best plan. Like the bishops, many French-Canadian politicians believed that only a Government headed by Sir John A. Macdonald could adequately protect minority rights. Chapleau was even prepared to resign unless the legislation was disallowed, but Taché convinced him that disallowance was not necessary and that the matter could be settled by other means. The Government accepted Blake's idea that an appeal to the courts would be the best means of restoring the constitutional rights of the French-Canadian Catholic minority of Manitoba. It was generally assumed that the courts would declare the Manitoba legislation ultra vires. Consequently, when in February 1891, the Manitoba Court of Queen's Bench upheld the earlier decision in W.K. Barrett vs the City of Winnipeg that the Manitoba legislation was intra vires since it did not affect any of the rights which the Roman Catholic minority of Manitoba had at the time of union, John Thompson, the Minister of Justice, suggested that the case be appealed to the Supreme Court.[9]

On October 28, 1891 the Supreme Court of Canada reversed the judgment of the Manitoba Court of Queen's Bench and declared the Manitoba schools' legislation to be ultra vires. This decision was appealed to the Judicial Committee of the Privy Council. On June

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7. Hon. W.R. Scott, Synopsis of the Manitoba School Case: With appendix of Explanatory Documents (Ottawa, 1897), pp. 29-30.
8. Canada, Debates, 1890, II, 4086ff.
9. Canada, Sessional Papers, 1891, No. 63, 3-5.

30, 1892, the Privy Council announced that the Manitoba legislation was intra vires to the chagrin of the federal Government which had financed the minority's case. The Roman Catholics of Manitoba had only one recourse left: remedial action by the federal government in accordance with section three of clause 22 of the Manitoba Act of 1870. Petitions poured into Ottawa and the Manitoba schools' crisis really began.

However, the Government was still uncertain what to do. Finally in February 1893 it decided to ask the Supreme Court's opinion as to the legality of having the Canadian Privy Council entertain the minority's appeal. Still evading a political decision, the Cabinet waited for the Court's opinion.

The decision of the Supreme Court was to be a disappointment for those who held that the minority of Manitoba had been treated unconstitutionally and unjustly. On February 24, 1894 the Supreme Court, by a majority of one, decided that the Governor-General in Council could not entertain the appeal of the Roman Catholic minority of Manitoba. The federal Government then appealed the Supreme Court's decision to the Privy Council.

On January 29, 1895, the Judicial Committee of the Privy Council decided that the minority's appeal could be heard and that the Government could remedy the situation "as they think fit," but without repealing the 1890 legislation.[10] The judicial roundabout which had begun in 1890 was now ended. After five years of delay the federal Government was now committed to action.

On March 21, 1895, the Cabinet issued a remedial order to Manitoba.[11] The order stated that three fundamental rights of the minority had been affected by the 1890 legislation: the right to establish public Roman Catholic schools, the right to share proportionally any subsidies made by the provincial Government in aid of education, and the right to be excused from having to support

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10. Ibid., 1895, No. 20, 291.

11. Ibid., 17-27.

the public school system if rate payers supported Roman Catholic schools. Manitoba was to restore these three rights. Should it refuse to obey the order, Parliament would have the authority to legislate.

The Reaction in Manitoba

The Manitoba Legislative Assembly refused to be intimidated. In its reply on June 19, 1895 Manitoba stated that it could not "accept the responsibility of carrying into effect the terms of the Remedial Order." They reasoned that the Roman Catholic schools had been found to be inefficient and defective and that they did not merit public funds. The Legislature denied the right of the federal Government to pass remedial legislation since no "effective and substantial" restoration of Roman Catholic privileges could be achieved without guaranteeing two essentials: the right to levy school taxes and the right to participate in the legislative subsidies to education. "Without these privileges," the Manitoba Legislature stated, "the separate schools cannot be properly carried on, and without them therefore, any professed restoration of privileges would be illusory." The federal Government could not legislate in either matter since they both affected provincial prerogatives. The Legislature therefore pointed out that the Province would have to give its assent to any restoration of these privileges.[12]

Remedial Legislation

After a series of Cabinet Crises, the Speech from the Throne at the beginning of the 1896 session announced that remedial legislation would be introduced. The Remedial Act of Manitoba was introduced by A.R. Dickey, the Minister of Justice, on February 11, 1896.[13] The Act proposed to set up a separate school board which would administer all Catholic schools. It would also appoint teachers and inspectors with the qualifications specified by the Manitoba Department of Education, and would select textbooks from the list authorized for the public school

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12. Ibid., No. 20e, 350-54.

13. Canada, Common Bills, 1896, Bill 58

system of Manitoba or the separate schools of Ontario. The essential weakness of the bill was its financial provisions. Roman Catholics would be able to elect to pay their municipal school tax to support their schools and those who did so would be exempt from paying taxes for the public school system. But the remedial bill did not go beyond this. There was no question of forcing Manitoba to divide its legislative grant since this would be unconstitutional.[14] The Liberals argued during the lengthy debate which followed that the bill was unworkable since its financial clauses were inadequate and since it depended for its administration on "a hostile government."[15]

The Donald Smith Mission

In the midst of the debate, the Government, under pressure from the Governor-General and Sir Donald Smith, one of the founders of the Canadian Pacific Railway and an important figure in the Conservative party, attempted to solve the problem without recourse to a remedial bill. Dickey, Smith, and Alphonse Desjardins, who had entered the Cabinet in January, were sent to Winnipeg on March 23, 1896. The religious authorities of Manitoba were consulted and, although not too enthusiastic about the mission, did not oppose it. The three proposed a settlement whereby 25 Roman Catholic children in towns, villages, or rural areas and 50 in cities would be given either a school building or a school room for their own use and would be taught by a Catholic teacher.[16] In any schools where Catholics were in the majority, the school was to be excused from the regulations as to religious exercises. In their own schools, Catholics could use textbooks which met the requirements of their faith and were approved by the Advisory Board. The mission also suggested that Catholics should receive adequate representation on the Advisory Board and on the various boards

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14. Canada, Debates, 1896, I, 1513.

15. Ibid., 1896, I 2756; see also ibid., II, 5153-154.

16. For the Government's proposals and Manitoba's answers, see Canada, Sessional Papers, 1896, No. 39c, 1-12.

which examined the credentials of teachers. Provincial assistance was to be given to a Roman Catholic normal school and Catholic teachers who did not hold the appropriate certificates were to be given two extra years in which to meet the provincial standards. When Manitoba had incorporated this settlement into legislation, the federal Government would withdraw the remedial bill and would not consider any further appeals from the Catholic minority. In fact, the mission asked Manitoba to establish a separate school system, but saved the Province the embarassment of calling it that.

The Manitoba Government represented by Clifford Sifton, was not prepared to accept these terms. Already irritated because the federal Government had not withdrawn the remedial bill before beginning the negotiations, Sifton argued that the proposed settlement would in effect establish a system of state-supported separate schools for Roman Catholics, who would receive special privileges which were not granted to other religious groups in the Province. Sifton also objected on the general grounds of economy, but he saw no difficulty in accepting the terms on Catholic representation on the Advisory Board and the examining boards, or on the selection of textbooks, if these concessions did not involve amending the Province's educational statutes. The Manitoba Cabinet rejected the idea that Catholic schools had to be established automatically for a specified number of children. They saw this as a denial of the principle of voluntary action since it deprived parents of the right to decide where to send their children to school. Manitoba also insisted that the federal Government withdraw the remedial bill immediately and not wait until the Manitoba Legislature met.

The federal representatives could not agree to Manitoba's views, except on minor points. They felt that what they asked for embodied "much less than what we understand to be involved ordinarily by the establishment of separate schools." Desjardins later reported that although Sifton had not been prepared to have Manitoba accept responsibility for any concessions to the Catholics, he had favoured a federal remedial law "pour mettre fin à une situation désagréable,"

and had stated that the Manitoba Government would respect and enforce any federal remedial legislation. Unfortunately Sifton's guarantee was never made public.

The Debate in Parliament

The House of Commons had already debated the Manitoba Schools' question extensively during the sessions of 1893-1894-1895-1896. In the session of 1893, the Conservative Government and Parliament (after accepting Edward Blake's motion unanimously in 1891) was committed to obtain a judical decision before attempting a political settlement. Sir John Thompson, the Prime Minister, argued that the Government was faced with two conflicting view points. On the one hand, there were those who did not want the Government to do anything. On the other hand, others wanted an immediate settlement through federal intervention. These two points of view had to be reconciled and they could only be if the Courts ascertained that an injury had indeed been committed against the Manitoban minority and under what circumstances or conditions the federal Government could and should intervene. Once these questions were answered, "both sides" should bow to the judical decision.[17] Many members of the House shared Thompson's views and based their arguments on his.

Opposing the Government's action were the McCarthyites who felt no action was necessary. Their leader was Dalton McCarthy who had given the impetus to the agitation in Manitoba. His allies were, for the most part, leaders in the Orange and Protestant crusades against what they called "French-Canadian domination." As Oscar D. Skelton has pointed out, this meant "French-Canadian equality."[18] The Manitoba crisis became a crusade for these men.

Another group who opposed the Government's plans, especially the appeals to the Courts and remedial legislation, was made up of most of the members of the Liberal party. Joseph Israel Tarte, who, by that

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17. Canada, Debates, 1893, 1820.

18. O.D. Skelton, Life and Letters of Sir Wilfrid Laurier, (2 vols.; Toronto, 1921), I, 392.

time had emerged as one of the most dynamic leaders in French Canada, considered the continued appeals to the Courts a sign of weakness and of unwillingness to do anything. Had it been the Province of Quebec which had abolished Protestant educational rights in Quebec, there was no doubt in his mind that such provincial action "would immediately be vetoed."[19] Surely what was justice for one group of citizens must also be just for another group.

Parliament continued to discuss the remedial bill, while the Smith mission was busy in Winnipeg. It was destined never to become law. The first reading took place on February 11. The debate on the second reading lasted from March 3 to March 20 when the Liberal motion of a six-month hoist was defeated 91 to 115. From March 31 until April 15 the bill was in committee. During that period, the House spent 223 hours discussion only 14 of its 122 clauses. The Liberals were accused of obstructing the bill's progress. On April 23, Parliament was prorogued and the general election was called for June 23, 1896.

The Views of Wilfrid Laurier

Wilfrid Laurier, who had succeeded to the leadership of the Liberal party after the federal election of 1887, was in fact the leader of a much divided party. Laurier did not oppose reference to the courts if these references were "genuine and efficient." In his 1893 speech to the House of Common, he felt that the Government decision to ask the Supreme Court if the federal authority could intervene under section 93 of the British North America Act was "simply ... a makeshift and nothing else." He concluded by stating:

> I blame them for these long delays, which only add fuel to the bitterness which now exists. Sir, we know that these constant triflings with burning questions are fraught with danger; we know that thrice already these

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19. Canada, Debates, 1893, 1756.

> triflings with burning questions have produced such convulsions as almost to imperil the life of Confederation. On this occasion, after procrastination, after long delays, shifting of expedients, subterfuge, at last the government will have to pronounce a decision, the population will by that time have been excited to such a pitch that the condition will be scarcely distinguishable from open rebellion to the law; and when that decision comes, whatever it may be, great disappointment is sure to result, and an impression will prevail that a great injustice has been done to a portion of Her Majesty's subjects.[20]

Yet, Laurier was determined to protect the minority in Manitoba in some way. It had been suggested to him that the non-sectarian public schools of Manitoba were essentially Protestant schools:

> If it is true ... that under the guise of public schools, Protestant schools are being continued, and that Roman Catholics are forced, under the law, to attend what are in reality Protestant schools, I say this, and let my words be heard by friend and foe, let them be published in the press throughout the length of the land, that the strongest case has been made for interference by this government. If that statement be true, though my life as a political man should be ended forever, what I say now I shall be prepared to repeat, and would repeat on every platform in Ontario, every platform in Manitoba, nay, every Orange lodge throughout the land, that the Catholic Minority has been subjected to a most infamous tyranny.[21]

When remedial legislation was introduced, Laurier acknowledged that the federal Government and Parliament had "the power to interfere." However, he argued that "that power should not be exercised until all the facts bearing upon the cause have been investigated and all means of conciliation exhausted." This policy, "to which the entire liberal party rallies," was to him the only policy which could remedy the grievance of

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20. Ibid., 2004.

21. Ibid., 1998.

the minority, "while at the same time not violently assaulting the rights of the majority and thereby perhaps creating a greater wrong."[22] Whether this Liberal policy really meant "remedial legislation if necessary, but not necessarily remedial legislation" is difficult to say.

The Campaign of 1896

During the electoral campaign of 1896, the Manitoba Schools'question was the central issue. There was no doubt that the Conservative party advocated the policy of federal intervention in order to redress wrongs inflicted on the minority of Manitoba. Its method of intervening was stated in the terms of the proposed Remedial Act of Manitoba with all its weaknesses. In this they were supported by the majority of the Canadian Roman Catholic episcopacy, especially the bishops of the Province of Quebec who did not hesitate to give the Conservative party public support.[23]

The position of the Liberal party was more difficult to ascertain. There can be no doubt that the party favoured intervention, but no one was too certain as to the form it would take. At the beginning of the agitation, many Liberals, especially French-speaking ones, favoured some form of remedial legislation. However by 1896, most of them had accepted the view of the majority in the party that coercion of Manitoba through remedial legislation was no solution. They believed that the minority of Manitoba had to be protected by other means.

James D. Edgar, a prominent Ontario Liberal, once proposed to Laurier that if the party was to have any strength in Ontario, the Liberal party must come out definitely against coercion of Manitoba.

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22. Skeleton, Laurier, II 474-76.

23. See LaPierre, "Politics, Race, and Religion" pp. 293-303.

On the other hand, such a policy would be disastrous in Quebec. Yet, he pointed out, that the Liberals were all in favour of "exhausting all efforts for an amicable settlement."[24] This meant a policy of federal intervention without coercion, that is, without remedial orders and bills.

Laurier accepted this policy, although he feared that it might minimize the value of the power of federal intervention as outlined in section 93 of the B.N.A. Act. Everyone should recognize, Laurier once wrote to a political friend that the federal Parliament "is vested with the power" of interfering with the provinces' educational legislation.[25] He also took to task J.S. Willison, the editor of the Toronto Globe, for holding the "ridiculous position" that though the right of appeal existed; "yet the appeal is never to be granted, it is always to be denied because, if granted, it would mean an abridgement of provincial rights."[26] Laurier did not want the Liberal party to deny this right of appeal nor the duty of the Government to intervene. The Government's intervention, however, should not be one of coercion, but rather of moderation and compromise. This was the only way, he and his party felt, that a workable and effective solution could be implemented.

On July 23, 1896, Canada elected a Liberal Government for the first time since the defeat of the Liberal administration of Alexander Mackenzie in 1878. The Liberals elected 117 of their members, the Conservatives 89, and there were 7 Independents. It is interesting to note, as Skelton points out, that Manitoba gave four of its six seats to the Conservative party, the party "which was supposed to be coercing it."[27]

The greatest surprise came from Quebec. On July 23, 1896 the Province elected 49 Liberals and 16 Conservatives. The Conservative party was thoroughly beaten, with even its most important leaders defeated.

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24. Laurier Papers, Edgar to Laurier July 26, 1895.
25. Ibid., Laurier to John Cameron, August 5, 1895.
26. Ibid., Laurier to Willison, August 2, 1895.
27. Skelton, Laurier, I, 484.

Why? A desire for change, six years of waiting for a solution to the schools' problem, dissatisfaction with a fiscal policy which had not fulfilled the expectations of the electorate, a lack of leadership: all these, and many more, were given as reasons for the Conservative defeat.

Since the Quebec episcopacy had laboured as openly for the Conservatives, one could say that the "calamity," as the Liberal victory was called, was also a defeat for the bishops. Although there is no doubt that the majority of the ecclesiastical authorities had favoured a Conservative government; yet the neutrality of certain bishops, like Archbishop Fabre of Montreal and Emard of Valleyfield, had made it possible for the Liberals, as well as the Conservatives, to wave "le drapeau épiscopal." Thus it is difficult to claim that the French-Canadian vote could be regarded as inimical either to the episcopacy or to separate schools in Manitoba. Most voters felt that they were working for the same cause as the bishops; namely, the protection of French-Canadian rights. As in Prince Edward Island the issue was to many one of language--not of faith.

Conclusion

By 1896, then the Manitoba schools crisis had not been solved. It had lasted almost six years and a solution--in terms of a return to the pre-1890 situation--was impossible. What politicians and others could salvage from this tragic situation will be discussed in the following chapter.

CHAPTER IV

THE MANITOBA SCHOOLS ISSUE AFTER 1896

Introduction

The purpose of this chapter is to study the attempts made after 1896 to solve the Manitoba Schools problem. The solution could, of course, only be in terms of a settlement which could only "tolerate" some Catholic and/or French-speaking schools. There was no possibility of returning to the pre-1890 situation. The chapter ends with a short discussion of the Keewatin School crisis.

Negotiations for Settlement

Immediately after the election, Laurier reopened discussions with the Manitoba Government. Joseph Martin, the first intermediary between Laurier and Greenway, the Premier of Manitoba, reported at the end of July that Clifford Sifton had suggested that the federal Government should outline in a confidential memorandum what it considered an acceptable compromise. Manitoba would then advise if it could be implemented, and if so, the Legislature would act upon it. There was no doubt in Martin's mind that Manitoba was committed "to go as far as they possibly can to meet your views on the School Question without departing from any of the principles which they have laid down in the past."[1] In August, Laurier prepared a confidential statement of policy along the lines of what would later be embodied in the Laurier-Greenway settlement.

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1. Laurier Papers, Martin to Laurier, July 27, 28, 1896.

The confidential statement, which was later sent to Rome as a proof of the good intentions of the Liberal Government, was a study of the location of the Roman-Catholic population of Manitoba. According to the census of 1891, Manitoba in 1890 had a population of 152,506 inhabitants. 20,571 of these were Roman Catholics. In all the Province of Manitoba, at the time of the 1890 legislation, there were 97 Catholic schools, of which 28 were in Winnipeg and St. Boniface and 69 in other parts of the Province. 3,316 Roman-Catholic children were registered in these schools, but only 2,267 children attended school regularly.

Furthermore, the Manitoba Statistical Year Book for 1894 showed that, except for the cities of Winnipeg and St. Boniface, the Roman Catholic student population of Manitoba was scattered all over the Province. For instance, the Catholics of the County of Lisgar were located in 17 municipalities; those of Marquette, in 29 municipalities; those of Provencher, in 15 municipalities; and those of Selkirk, in 29 municipalities. With these figures in mind, it was easy to conclude that it would be difficult for Roman Catholics to maintain their own schools outside the cities of Winnipeg and St. Boniface. But the majority of Roman Catholics did not live in those two cities. Their small numbers in outlying districts and the hostility of the municipalities and provincial authorities towards them made it almost impossible for them to establish good schools.

Laurier was also surprised (and this seems to have impressed him most) that before the Manitoba legislation of 1890, almost half of the Catholic student population of Manitoba either attended the public schools or did not go to school.[2]

Before any settlement could be concluded or made public, certain details had to be worked out and above all, it was necessary for the federal Government to ascertain Catholic opinion in the West.

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2. Ibid., Laurier to J.B. Proulx, November 23, 1896.

For this reason, Justice Routhier, who had become a Liberal in 1896, was sent to Manitoba during the summer. Routhier reported that he could distinguish four levels of Catholic opinion among the priests and the laity. First, many French-Canadian and Catholic Liberals were prepared to accept any compromise. A second group favoured a compromise which would grant "des écoles vraiment catholiques." Allied to this group were the majority of the Conservatives, while the rest, "politiciens avant tout," as Routhier put it, would accept only a remedial bill with federal grants to separate schools. Routhier considered that this last suggestion would mean a separate Catholic Department of Education with its own superintendant. He rejected this idea, but argued that there was still a minimum without which a settlement could not be accepted.[3]

Joseph Israel Tarte's Mission

To prepare the Catholics of Manitoba to accept a compromise and to obtain further concessions from the provincial government, Joseph Israel Tarte accompanied by Henri Bourassa, visited the Western provinces and territories in October and November 1896 on an inspection tour of government projects in his capacity as Minister of Public Works. As soon as he arrived in Winnipeg, Tarte outlined his views on a possible settlement in a speech, in which he argued that everyone must understand that the "national schools" of Manitoba could not be abolished. But he pointed out that the Manitoba schools question could only be solved by giving "our children" equal rights and equal liberties as to religion and language. Surely no one could argue that a few hours each week given over to the teaching of religion would "decrease the price of wheat" or "the fertility of your lands." As for language, everyone should remember that French "is not an uncivilized language." Therefore, he concluded:

> Allow my children to learn their own religion and I am quite prepared to allow your children to learn their own religion. Sir, there will be bigots all

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3. Ibid., Routhier to Laurier, September 1, 1896.

> over Canada who will not agree to any fair settlement; on the 23rd of June we buried them in Quebec, let us do the same everywhere. We have no time to lose in religious and racial wrangles. We can build a great nation here; we have abundant resources; we have unlimited richness of land and minerals, why should we lose our time in hating each other and in religions discussions?[4]

In another speech he stated that although the pre-1890 school system could not be re-established, it was still possible to obtain "une amélioration considérable de l'état des choses actuelles."[5] He also visited schools where he spoke of the possibilities of national unity "de voir grandir ensemble, côte-à-côte, plus intimement les enfants protestants et catholiques, anglais et français."[6] Representatives of the Catholic minority found him willing to listen to their views and to act as an intermediary between them and the government.

Six days after his arrival in Winnipeg, Tarte visited Archbishop Langevin who had succeeded to the See upon the death of Archbishop Taché. Tarte adopted the policy that the ecclesiastical authorities were not to be directly involved in the discussions and that a settlement would be arrived at without their official sanction. This may have been imprudent, but no other course was really possible. The pre-1890 system could obviously not be re-established and Tarte, and others, held the episcopacy directly responsible for the failures of 1890 to 1896. Furthermore, Langevin was already committed to the solution of remedial legislation as envisaged by the Conservatives. He could therefore no longer be considered the official spokesman of the minority, a minority which by 1896 was not solidly united behind him. Consequently, he was not shown the settlement prior to its publication, though Tarte saw him four times and agreed that Langevin could report their conversations to his episcopal colleagues.[7]

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4. Manitoba Free Press, October 24, 1896.
5. La Patrie, October 31, 1896.
6. Ibid., October 31, 1896.
7. Canada, Debates, 1897, 244.

In these interviews, Tarte pointed out that since French Canadians and Roman Catholics were in the minority, they could not obtain every concession they wanted. Langevin, believing his constitutional position "si forte," was determined to obtain Catholic schools under ecclesiastical control, with Catholic teachers trained in a Catholic normal school, Catholic inspectors, Catholic books especially in history, no fixed time for religious instruction, a percentage of school taxes and provincial subsidies, and an exemption for Catholics from support of the public school system. Tarte felt that it would be almost impossible to fulfill most of the Archbishop's wishes, but he thought he could obtain a number of Catholic schools with a Catholic inspector and teachers with the required qualifications, Catholic books and French grammars, a Catholic representative on the Advisory Board, and some concessions on a normal school and school districts. "Nous aurons beaucoup," he stated. "obtenez tout ... ce sera plus sûr," was Langevin's reply.[8]

Meanwhile, Tarte had long interviews with the Greenway Government, especially with Sifton who seems to have been the most co-operative. Tarte was very careful not to accept direct responsibility in the name of the federal Government. In this way a serious attempt was made to remove the question from the federal arena. On November 6, Tarte reached an agreement with the Manitoba government and on the following day the settlement was sent to Ottawa.

The Laurier-Greenway Settlement

The Laurier-Greenway settlement was made public on November 19.[9] It did not re-establish the separate school system as it had existed prior to 1890; nor did it organize Catholic schools into Catholic school districts; nor did it permit pupils to be segregated by religious denomination for secular school work. However, it attempted to mitigate the most offensive grievance of the Roman Catholics and French Canadians. It permitted separate religious

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8. Canada, Debates, 1897, I, 236 ff.

9. Manitoba, Statutes, 60V., c, 26.

instruction between the hours of 3:30 and 4:00 o'clock in the afternoon when the parents or guardians of ten children attending a rural school, or 25 in a city, town, or village, petitioned the Board of School Trustees to that effect. Catholic school teachers would be hired when the Roman Catholic enrolment of a school in an urban district listed 40 or more Catholic students, or 25 in rural districts, if the parents petitioned the Advisory Board. Finally, upon the request of parents, it allowed teaching in French when ten or more French children attended any school of the Province. Furthermore, French, or any other language other than English, could become a language of instruction should there be a sufficient number of children and should their parents so desire. These schools, however, would be bilingual.

The settlement was more advantageous to the Roman Catholic minority than the proposals which Dickey had made in 1896 and which the Conservative party and, no doubt, the episcopacy would have accepted. While the Dickey suggestions had meant the establishment of a separate school system which the Province would never accept, they had made no provisions for the use of French, for religious instruction in the schools where there were less than 25 to 50 Roman Catholic children, or for the establishment of Catholic schools in rural areas, and the number of Roman Catholic children needed to establish Catholic schools had been much higher.

The federal Government also received Greenway's word on several of the points raised by Langevin. Catholics were to be represented on the Advisory Board and a Roman Catholic French-Canadian inspector would be appointed. Teachers with a Quebec diploma would be accepted ad eumdum and books which Catholics objected to would not be used in teaching Catholic children. These concessions might not be implemented immediately, but the Liberals could claim that a certain number of minority rights had been obtained within the public school system.

The Debate in Parliament

The settlement was debated in the House in the session of 1897. The Speech from the Throne stated that after many "protracted

discussions" a settlement had been reached between the two governments. It was the "best arrangement possible under the existing conditions" and it was hoped that it would put an end to the agitation surrounding "this disturbing question" which had "marred the harmony and impeded the development of our country." The settlement was presented as the beginning of a new era "to be characterized by generous treatment of one another, mutual concessions and reciprocal good-will" - the basic theme of Laurier's policy.[10]

The Conservatives, led by Tupper, Foster, Monk, and Dupont, argued that the Laurier-Greenway settlement did not restore "one single privilege, one single right, taken away from the Roman Catholics of Manitoba by the bill of 1890." Therefore, a "settlement that does not give substantial justice, that does not meet the case, in my judgment ought not to be dignified by the name of settlement." They did not approve of religious education being relegated to half an hour each day after school hours. The settlement appeared to them as a "shameful transaction," and "a fraud, a shame," and they concluded by stating that it would never satisfy anyone.[11]

Liberal leaders, like Laurier and Charles Fitzpatrick, fought back. To Laurier, the compromise was not as "advantageous as I desired myself"; but after six years of quarrels and agitation which boardered on civil war, "it was not possible to obtain more, nor for the government of Manitoba to concede more, under present circumstances." Fitzpatrick, the Solicitor-General, refuted the main legal arguments used by the Conservatives. He claimed that it was impossible for the Government to re-create the separate school system which had disappeared by virtue of the Act of 1890 since the Privy Council had recognized this law to be intra vires. Conciliation was the only possible way to restore to the minority certain conditions and rights. The federal Government could not legislate on the appropriation of provincial funds, nor could it exercise a

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10. Canada, Debates, 1897, 1. 4.

11. Ibid., 1897, 35, 38, 144, 149, 202.

direct control over the administration of the schools. Consequently he agreed with Laurier that this was the best possible solution under the existing circumstances.[12]

The Legislature of Manitoba passed the various amendments necessary to implementing the Laurier-Greenway settlement. The provincial legislation came into effect on August 1, 1897. The first concession made by Manitoba was to place the French-speaking schools under the supervision of a French-speaking and Roman Catholic official. Others followed, but since that time, neither the Government of Canada nor the higher courts of appeal have had to deal officially and formally with the school question in Manitoba.

The Keewatin Issue

As far as the federal Government is concerned, there was still to be a final chapter in this long story. In July 1908, the Laurier Government presented a resolution in the House of Commons extending Manitoba's boundary to include the district known as Keewatin.

Laurier was under great pressure to guarantee the educational rights of the Roman Catholic minority of the district of Keewatin since it was alleged that separate Roman Catholic schools were permitted under the North-West Territories Act of 1975. It was further stated that the separation of Keewatin in 1876 had not impaired the legal status of the separate schools in that area and that in fact, these had been strengthened in 1905 when the territory, for administrative reasons, was re-united with the North-West Territories. In all his discussions with the Manitoba Government and

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12. Ibid., 1897, 65, 190.

Apostolic Delegate, Laurier refused to admit that the extension of Manitoba's boundaries offered the federal Government an opportunity to re-open the schools question. If Keewatin was united with Manitoba, Manitoba's schools laws and regulations would apply.[13]

Since Manitoba objected to the financial terms outlined in the resolution, the Government did not pursue the matter. Although Laurier pursued his interest in this matter, Keewatin was not annexed to Manitoba until he had left office. The Borden Government finally introduced legislation covering the territorial transfer in February 1912. Like his predecessor, Borden had decided that the extension of Manitoba's frontiers could not be used as an excuse to impose upon Manitoba an educational formula which that Province was not prepared to accept.

It was not until after the second reading, at the beginning of March, that the schools question was raised, although there had been rumours to the effect that the French-Canadian supporters of the Government and the French-Canadian Cabinet Ministers were disappointed with the Government's decision not to give constitutional guarantees to the minority.

The Debate in Parliament

French Canadians who objected to the new legislation argued that the House was "duty-bound" to see that the 1870 constitution of Manitoba should apply not only to Manitoba as it was then, but to the whole Province, including the new territory which was to be annexed to it. It was argued that 1870 had consecrated a principle which 1890 had not removed. However, no doubt because of the 1890 Manitoba legislation and the failure to improve the Roman Catholic schools' situation down to 1911, a Member moved that section 22 of the 1870 Manitoba Act whould also apply to the territory being added to Manitoba; so that "nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which

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13. Laurier Papers, Laurier to Mgr. Sbaretti, December 10, 1906; see also G.R. Cook "Church, Schools, and Politics in Manitoba," Canadian Historical Review, March 1958, pp. 1-24

any class of persons have by law or practice in the Territory added to the Province under the provisions of this Act."[14]

The Minister of Justice, C.J. Doherty, replied for the Government. He felt the amendment to be superflous. The solution to the problem hinged upon ascertaining "whether in this territory that is going to be annexed to Manitoba there are existing rights established by law and which would require for their protection the inclusion of some special provision in this legislation." He argued that the Liberal legislation of 1876 had made no mention of separate schools. Consequently, it was impossible to argue that a separate school system did exist by law in Keewatin. He did not deny, however, that Roman Catholic schools did exist and were tolerated.[15]

Laurier, who was by then the Leader of the Opposition, once again argued that coercion was not an acceptable policy. Constitutional guarantees to the separate schools of Keewatin "would not be worth the paper on which they were printed" because we cannot impose "them on Manitoba." This occasion was surely one for "compromise" and "conciliation."[16]

Borden agreed that the occasion offered a splendid opportunity for conciliation. In fact his French-Canadian Ministers had hinted publicly that the Manitoba Government could be relied upon to follow a just and equitable course of action toward the minority.[17] They were referring to the Coldwell amendments which were introduced in the Manitoba Legislature on April 1, 1912.

The Coldwell Amendments

It appears that in 1912, the Archbishop of St. Boniface, Archbishop Langavin, suggested to the Manitoba Government certain modifications to the legislation which had applied the terms of the Laurier-Greenway Settlement. The Coldwell amendments were the result of this suggestion. An amendment stipulated that the number of

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14. Canada, Debates, 1912, 4840 ff.
15. Ibid., 4846 ff.
16. Hopkins, Canadian Annual Review, XII, 266.
17. Canada, Debates, 1912, 4420, 4444, 4492.

students needed before a petition for a Catholic teacher could be presented was to be reduced from 40 to 25. Two other amendments, in effect, recognized the rights of Catholics in public schools and ended the practice which forced them to construct and maintain, at their own cost, schools for their children, while at the same time contributing to the public school system.[18]

There is no doubt that these amendments prevented a schools crisis in 1912.[19] There was some agitation, but because Borden was able to keep intact his Quebec support, there was no crisis. The Coldwell amendments came at a propitious time. They did not solve the problem entirely. Nor did they guarantee minority rights as such. They made concessions. No doubt many felt that ideals of compromise and conciliation had been respected.

The amendments, of course, did not imply a return to pre-1890 days. Exactly what they meant, however, was quite difficult to assess since some claimed that they were "a great step in the path of restitution," while others looked upon them as the only solution to the plight of the Roman Catholic population suffering under the burden of what could be called "double taxation."

The amendments were badly received by the population of Manitoba, especially from members of the Conservative Party and the Orange Order. In fact, they became a central issue in the provincial election of 1915.

Conclusion

The causes of the Manitoba Schools crisis were many and varied. However, there is no doubt that the racial and religious divisions which had plagued the country ever since the execution of Louis Riel in 1885 were the principal cause of it. Incidents like the Jesuite Estates' Act of 1889 and McCarthy's anti-Catholic campaigns accentuated it. Yet, the fact that Canada was a new

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18. Hopkins, Canadian Annual Review, XII, 523-24.
19. Cook, "Church, Schools, and Politics in Manitoba," 22-23.

country, a new nation, also had much to do with it. Immigrants were coming from all over Europe to plant new roots in the New World. Many felt that if an ordered society was to result, it must assure a fair and equal treatment to every group within the body-politic. This meant there would be no "privilege" status for any one group. The abolition of separate schools and the special guarantees to the French language which had been written in the various legislations affecting Manitoba were to a large extent part of the application of this ideal.

Many sincerely believed that an egalitarian society was the only way to maintain the peaceful and orderly development of the Province. And the best means to achieve that egalitarian society was through the establishemnt of an educational system which was "democratic"; that is, non-sectarian and English-speaking. Only by bringing together children from a variety of religious, racial, cultural, linguistic, social, and economic backgrounds could the "artificial" divisions -- these "accidents of birth," as Tarte called them -- within society, be eliminated. This theory had much in common with the American idea of the"melting pot."

To a large degree, this philosophy also dominated the school crises in New Brunswick and Prince Edward Island. However, in these provinces, the legal and constitutional situation differed radically from the position in Manitoba.

In the Manitoba schools' crisis, the Roman Catholic minority had been assured of its right to separate and denominational schools, nor only by the legislation which created Manitoba, but also by the historical circumstances which prevailed in 1869 and 1870. To suggest that what is called the First Riel Rebellion, would have come to an end more quickly, had the federal Government not guaranteed the continued existence of separate schools is absurd. These guarantees were part of the basic rights of the Metis people. The legislation of 1870 creating the Province of Manitoba only reflected these historical circumstances. The fact that French-speaking Canadians did not emigrate to the West in greater numbers did not

change the nature of these constitutional and historical guarantees. After all, the less numerous a minority, the more sacred ought to be their rights.

It now appears that what should have been done in 1890 was to disallow the Manitoba legislation. Parliament by accepting unanimously Blade's motion to the effect that educational questions arising out of provincial statutes should be settled by the courts, greatly impaired the federal Government's powers of intervention under section 93 of the British North America Act. By referring the matter to the courts, the federal Government abdicated its responsibility in favour of the judicature. Yet, the Canadian constitution places the educational rights of the minorities under the protection of the Governor-General in Council and not under the protection of the courts.

Reference to the courts also caused an interminable delay which only aggravated the situation. It is quite true that only an army could have enforced remedial legislation of 1896. But would this have been the case had remedial legislation come in 1892?

When a solution came with the Laurier-Greenway settlement, it was too late to do anything, but make a pretence at recognizing the educational needs of the Manitoban minority. After 1900, although some members discussed the matter in the House, it was often raised in newspapers, speeches, and private letters, the federal Government could do nothing to maintain, let alone increase, the concessions made previously. Because of delay and indecision, "constitutional rights" became "political concessions." In the process there can be no doubt that an injustice was sanctioned by the federal Government which was supposed to act as the protector of the minority.

The injustice was even more pronounced due to the fact that the "religious" schools were as much the "national" schools of the French-speaking population of Manitoba and Keewatin. To abolish them was to insure the disappearance of "la présence canadienne française" in the West.

CHAPTER V

THE SEPARATE SCHOOL CRISIS OF 1905

Introduction

The Canadian Government obtained Rupert's Land and the North West Territories in 1870 after negotiations with England. The year before, in preparation for the transfer of jurisdiction, the Canadian Parliament passed an Act for the temporary government of the North West Territories. This legislation provided for a Lieutemant-Governor to administer the area, basing his decisions on periodic instructions from Ottawa. He was empowered to enact laws or ordinances, but these were to be reported to Parliament. The Act also provided for a Council to aid the Lieutenant-Governor. The Council members were to be appointed by the federal Government, and were to be no fewer than seven and no more than fifteen.[1] When the Manitoba Act was passed in 1870, the Lieutenant-Governor of the new Province was appointed to the same position for the North West Territories.[2] Finally, the next year, a permanent North-West Territory Act was passed.

Apart from several Orders-in-Council, it was not until 1875 that the federal Government again concerned itself with the North West. But in that year, the Mackenzie Government undertook to consolidate all existing legislation into a more comprehensive North West Territories Act. This Act became the basis for all subsequent activity in the Territories. One significant feature of the Act was that no longer did Ordinances passed by the Council require federal approval before going into effect.[3] This change was to have important effects as far as education was concerned.

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1. Canada, Statutes, 32-33V, c. 3.
2. Ibid., 33V, c.3.
3. Ibid., 38 V., c.49, s.11.

The purpose of this chapter is to study the crisis which occured when Alberta and Saskatchewan were created in 1905.

The Search for Autonomy

To understand the developments in the North West Territories it is well to bear in mind that when Canada obtained the Territories, it inherited a very particular situation. On the one hand, the federal Government was simply replacing the British Government in the administration of the land, and therefore the federal Government, perhaps unconsciously, slipped into an "imperial-colonial" relationship, so that in a certain sense, the Territories bacame a colony of the federal Government.[4] On the other hand, a definite political tradition, although rather weak, existed by 1870 in the vast expanse of land west of Ontario. This political tradition was composed of two elements : a tendency toward self-assertion, as exemplified by the Red River Rebellion of 1869 and secondly, a respect for the benefits of federal control.[5] These elements explain much about the course of events in the North West Territories leading up to the Autonomy Bills of 1905. Together they explain why the urge for autonomy arose, but also why it took so long to be realized.

The theme of autonomy which runs through the history of the North West Territories can be seen in the successive extensions of power of the local administration until responsible government was finally achieved. After much negotiation with the federal Government, the Council was changed into a Legislative Assembly in 1888 and in the same year an Advisory Council was created. This soon became the Executive Committee which functioned like a Cabinet. The final step in this progress was reached in 1897, when by an Act of Parliament, the North West Territories became self-governing. The creation of the provinces of Alberta and Saskatchewan was a natural culmination of the

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4. L.H. Thomas, The Struggle for Responsible Government in the North West Territories, 1870-92 (Toronto, 1956), p. 4.

5. Ibid., p.3.

aspirations of a growing number of Westerners to run their own affairs.

The North West Territories Act of 1875

The first legislation for the North West Territories which mentioned education was the North West Territories Act of 1875. This Act was introduced into the House of Commons by Prime Minister Mackenzie, who was intent on establishing an independent government in the Territories. The first version of the Act made no mention of education, and the omission was quickly noticed by Edward Blake. There followed a short discussion in which Blake advocated that a general principle concerning public instruction be included in the Act. Since the expected population would be similar to that of Ontario, he favoured the same rights and privileges for religion and the schools as existed in Ontario. The Prime Minister agreed to include such a provision in the Act, and thereupon drew up section 11, to deal with education and separate schools.

This educational clause stipulated that the Lieutenant-Governor of the Territories, with the consent of the Council, was to pass "all necessary Ordinances in respect to education." Certain conditions were to be observed, nevertheless. In any district, a majority of ratepayers could form whatever type of school they wanted and could assess and collect taxes. A minority, be it Protestant or Roman Catholic, in the same district could form a separate school. In this case, the minority would assess and collect taxes only for this school.[6]

The Act of 1875 established the pattern for education in the Territories, but the Act also contained several ambiguities, or perhaps, weaknesses. Although the right to establish separate schools was guaranteed, the Lieutenant-Governor and Council were given very broad powers regarding education. Coupled with this was the fact that the federal Government could no longer disallow ordinances passed in the

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6. Canada, Statutes, 38V., c.49, s.11. For the school legislation of the North West Territories between 1875-1905 see North West Territories, Ordinances, 1887, No. 2, 2-68; 1892, No. 22, 102-85; 1901, No. 29, 196-241.

Territories. These and other factors meant that changes could be made in the laws governing the Territories could not be challenged according to the terms of the original legislation.

Much confusion arose as to the exact meaning of the North West Territories Act of 1875. Up to 1892, there was a dual school system. In that year, the Council of the North West Territories, no doubt encouraged by Manitoba's determination to solve its educational problems, decided to merge the two separate school boards which had directed education up to that time. It decreed that only graduates from normal schools could teach, thus excluding many nuns. It also established a uniform system of books and the Catholic minority feared that it was only a question of time before all school inspectors would be chosen from the Protestant majority. The Ordinance also limited the teaching of French in the schools.[7]

The Federal Government

These developments had not taken place without opposition within the Territories. After the Ordinance of 1892, the Roman Catholic clergy sent nineteen petitions to the governor-General in Council requesting federal disallowance of the Ordinance on the grounds that minority rights had been prejudicially affected. In spite of considerable pressure, the Government, on February 5, 1894 refused to dissallow the Ordinance. Sir John Thompson, the Prime Minister, wrote to Senator Bernier on October 17, 1894: "we cannot undertake, by the power of disallowance, to correct all the improprieties and unfairness in provincial legislation."[8] Aldéric Ouimet, then Minister of Public Works, wrote to Archbishop Louis Nazaire Bégin, Cardinal Taschereau's coadjutor, that the French-Canadian Ministers had worked relentlessly to have the Ordinance disallowed but that they had not been successful. The majority of the Cabinet felt that the Council had acted within its competence

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7. Ibid., 1892, No. 22, 102-85. Royal Assent was given on December 31, 1892. The Ordinance was amended in 1893 and was given Royal Assent on September 16, 1893; ibid., 1893, No. 30, 250-53.

8. Quoted in LaPierre, "Politics, Race, and Religion," p.274.

and that a federal veto would embitter the English-speaking and Protestant population of the Territories with disastrous consequences for their French-Canadian and Catholic compatriots. Other French-Canadian Cabinet Ministers accepted this opinion and refused to precipitate a Cabinet crisis, believing that diplomacy would be more beneficial than coercion in the long run.

The matter was referred to the Judicial Committee of the Privy Council which, after a full investigation, decided that minority rights had not been affected. The Judicial Committee recommended that the Roman Catholics petition the Government of the Territories for a redress of their grievances. However, when this was done, Premier Haultain dismissed it by saying that since his Government paid the grants, it must control the schools. He also said that the educational system must be above "any sectarian difference."[9] This may be taken as typical of the attitude that prevailed in the Territories.

The Ordinance of 1901

In 1901 these limitations were more clearly defined. Separate schools were still permitted but they were administered by a Department of Education, assisted by an Advisory Educational Council with Catholic and Protestant representatives, and separate school supporters were not obliged to support the public school system. Religious education in all schools was limited to an optional half-hour at the end of the school day. Roman Catholics were also allowed their own inspectors, teachers, and textbooks, but these privileges were not guaranteed by legislation, merely by practice. In 1905, many Roman Catholics, and especially the French-Canadian Catholics, wanted all these concessions enacted as constitutional guarantees.

Reactions in the North West

The Roman Catholic clergy never became reconciled to the

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9. C.C. Lingard, Territorial Government in Canada (Toronto, 1946), p. 157.

gradual elimination of their separate schools. On the other hand, it seems that the Roman Catholic laity were content with the school system as it stood in 1901. There is no evidence to suggest that the people wanted religious separation in the schools. Indeed, although the number of schools increased in the Territories, the number of separate schools decreased.[10] By 1905, when the agitation over separate schools in the proposed new provinces began to disturb Canada, the people of the North West Territories believed that no problem over separate schools existed, nor did they foresee any difficulty. When the time came for the new provinces to be constituted, the people of the North West made it clear that they would resent any attempt to impose restrictions on their new education system. In the controversy which ensued, the attempt to provide legal provisions for separate schools in the new provinces was not the result of pressure in the Territories.

The Negotiations for Autonomy

The ever-present drive in the Territories for self-government reached a peak in 1901. Soon the demand reached the federal level, where the Leader of the Opposition, the Honourable R.L. Borden, took up the cry and began to insist that the Government create new provinces. Laurier was able to delay the growing demand for autonomy until the federal election of 1904 in which he promised an Autonomy Bill for the Territories. This raised the problem of separate schools for the new provinces. He well knew, as did other interested parties, especially in Eastern Canada, that the separate school question was fraught with danger.

However Laurier hoped that men of good will could come together and base their policies on a broad foundation. "Why, in the name of patriotism, attempt to resurrect the now dormant separate school question?" he wrote to a political acquaintance in June 1904.

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10. In 1900, there were 593 schools in operation in the Territories. By 1904, the number had increased to an estimated 1,116. The number of separate schools never exceeded 16, and in 1905 there were only 11; ibid., pp. 113, 159.

To extremists on both sides, he would want them to remember that "Confederation was a compromise" and that many had made "great sacrifices of private opinion" to bring it about. The work of unity conceived and begun in 1867 was "far from complete" and it should be continued "in the same spirit in which it was conceived."[11]

Early in 1905, Laurier called a series of conferences between the federal Government and the authorities of the North West. The federal Government was represented by a Cabinet Committee consisting of Sir W. Mulock, R.W. Scott, and C. Fitzpatrick. Representing the Territories, were Premier Haultain and several other members of his Council. The meetings were held to negotiate the terms under which the Territories would be converted into provinces, and as a basis of negotiation a rough draft of a bill made by Haultain was used. The draft covered most aspects of the proposed autonomy but contained "no direct reference to education."[12] Apparently, education was scarcely considered at all during the negotiations, with the North West representatives believing that the current system would remain untouched and Laurier evidently content to have them believe that.

At the conclusion of these negotiations, the Cabinet Committee met on February 18 and 20 to formulate a policy for creating the new provinces. Then came the drafting of a bill to present to Parliament, and it was at this moment that the educational clause became the centre crisis. The Minister of Justice, the Honourable C. Fitzpatrick, later claimed in the House of Commons that he was technically responsible for the drafting of the Autonomy Bills.[13]

Laurier announced the Government's legislation in Parliament on February 21, 1905. The all-important educational clause stipulated that "section 93 of the British North America Act, 1867, shall apply to the said Province as if, at the date upon which this Act comes into force the territory comprised therein were already a Province."[14] This meant that the provincial Government's authority in education

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12. Lingard, Territorial Government, p. 130

13. Ibid., p. 132.

14. Canada, Commons Bills, 1905 Bill 69, s. 16.

was limited. Clause 16 defined this limitation by permitting the establishment of public and separate schools and by guaranteeing that the minority would be free to pay taxes for the support of their own schools and would receive a fair allotment of the provincial educational subsidies. There was no question of establishing a dual administrative system as in Quebec, yet since clause 16 repeated verbatim the provisions of the North West Territories Act of 1875 and overlooked the Ordinance of 1901 which had amended the earlier legislation, many feared that a dual administrative system would in fact result.

Reaction outside Parliament.

A storm of protest arose immediately. Sifton's resignation was announced on March 1 and it was rumoured that William S. Fielding, the Minister of Finance, would also resign. Petitions poured into Ottawa demanding that the newly created provinces be free to control their own facilities. In Ontario, Methodist ministers, Presbyterian clergymen, the Orange Lodges, and other Protestant organizations banded together to protest the proposition that, as Goldwin Smith put it, "the new Provinces shall be bound for ever to recognize, maintain, and propagate the Roman Catholic religion."[15] Tarte attributed the agitation to Sifton whose fanaticism had let loose "les passions religieuses et nationales," and he recalled that Sifton had been more conciliatory in 1896 when there had been the possibility of a Cabinet portfolio for him.[16]

Whether this was true or not, the Liberal members from Manitoba and the Territories rallied behind Sifton. The Toronto Globe published a letter from Premier Haultain which mentioned that a full discussion of the education question had never taken place during the negotiations. Pressure began to mount on the Government, from Ontario in particular. A crisis of this kind always produces a newspaper war, and the newspapers of Ontario launched the attack. The Quebec newspapers retaliated and Henri Bourassa, assisted by the episcopal hierarchy, took up the

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15. Arnold Haultain, ed., A Selection from Goldwin Smith's Correspondence (London, n.d.), pp. 423-33.

16. La Patrie, March 2, 15, 27, 1905.

fight for separate schools in the new provinces.

Laurier was faced with the disintegration of his party and with another Protestant vs. Catholic, English vs. French confrontation. All the ideals and the mission of his political career appeared endangered.

Constitutionally Laurier felt himself on solid ground. The Parliament of Canada was empowered to frame the provincial constitutions of any new provinces. In that process, it was necessary to protect minorities. It could never be the intention of the Canadian Government "to ride roughshod over them." In the case of education, minority rights were best protected by limiting provincial autonomy over education, an autonomy already limited by section 93 of the British North America Act.

Laurier expressed this view to the editor of the Montreal Witness, J.R. Dougall, on March 4, 1905.[17] After expressing some views on the character of the educational clauses in the B.N.A. Act, he asked: "can you doubt that if the provinces of Alberta and Saskatchewan had been admitted into the Dominion in 1867 instead of 1905, they would have received the same treatment as was given to Ontario and Quebec?" There was no doubt in Laurier's mind that "this can be denied". What Laurier proposed to do then was "to give the minority the guarantee of the continuance of their system of schools as they would have had it in 1867."

Regardless of the importance of the constitutional aspects, Laurier appealed beyond this. In the Canadian Confederation, "the first duty is to keep faith"; to keep faith with provinces, with groups of individuals, and with minorities. This was the essential part of the never-ending compromise that is Canada.

Moreover, Laurier was also disturbed by the dilemna of it all. On the one hand, he was confronted by an unanimous Quebec, a Quebec which had been "induced to swallow twice," in 1896 over the Manitoba Schools affair and in 1899 over the South African controversy.

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17. Skelton, Laurier, II, pp. 232-33.

Must Quebec always make all of the sacrifices necessary to keep Confederation going? Laurier was disturbed that a capitulation might amount to the dictatorship of the majority with due consequences.

On the other hand, to ignore the wishes of the vociferous majority would be to base his political power largely on Roman Catholics and French Canadians. Laurier had never accepted this in the past, not even during the Riel débâcle. Consequently, in the face of an agitation which might either embitter the minority or create a religious and/or racial party, a compromise would have to be found.

The Debate in Parliament

When Laurier introduced the legislation creating the new provinces of Saskatchewan and Alberta, he stated that the legislation of 1875, which had been the first important law for the administration of the Territories, had introduced "into that country the system of separate schools in force in the Province of Ontario." His 1905 legislation only made provisions for that system to be "continued" in the new provinces. Confederation had done just that in 1867 in the case of Quebec and Ontario, and he proposed to repeat the process.[18]

Those who argued against Laurier's position did so on the grounds that the proposed educational clause was a direct interference with provincial rights.[19] Others, like Clifford Sifton, were opposed to the principle of "separation in education."[20] For these and other reasons, many believed that it would be better to leave the matter to the provinces concerned to deal with as they wished. All the federal Government could do, they argued, was to recognize the educational system which existed in the Territories in 1905. They took great pains to remind Laurier that many changes had taken place in that system since 1875.

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18. Canada, Debates, 1905, 1423-58.
19. Ibid., 2977, 3031.
20. Ibid., 3103-08.

Attempts at a Settlement

In view of the strong opposition in English-speaking Canada, the Minister of Justice, Charles Fitzpatrick, called a meeting on March 1, to find out what modifications Sifton and his Liberal allies wanted. As mentioned above, their key concern was that the 1875 legislation be given up as the basis for the new Act. Several proposals were made, but finally the north-western Liberals presented a draft clause to the Government which consisted of three subsections drawn up by Sifton. The first of these was the most important, for it provided for the maintenance of minority rights as in the Ordinance of 1901. The other two subsections were based on subsections 3 and 4 of section 93 of the British North America Act and were identical to subsections 2 and 3 of the Manitoba Act of 1870.[21]

In the face of the "outburst of passion," which coincided with the debate on the second reading of the bill, Laurier moved an amendment to answer the objection that the original clause had overlooked the terms of the Ordinance of 1901.[22] Sifton agreed to the Government's amended version, and he and Laurier claimed that two important privileges were preserved: the right for the Catholic or Protestant minority rate payers to establish a separate school in any district, and the right for any minority to have half an hour of religious instruction in that school.[23] A comparison between the original clause 16 and the amended version follows.

Original clause 16	Amended Clause 16
1. The provision of section 93 of the British North America Act, 1867, shall apply to the said Province as if, at the date upon which this Act comes into force, the territory comprised therein were already a province....	Section 93 of the British North America Act, 1867, shall apply to the said Province, with the substitution for paragraph I of the said Section 93 of the following paragraph.

21. Lingard, Territorial Government in Canada, p. 183

22. Canada, Debates, 1905, 2925.

23. Ibid., 1905, 3092-121. See also J.W. Dafoe, Clifford Sifton in Relation to his Times (Toronto, 1931), pp. 249-52.

Nothing in any such law shall prejudicially affect any right or privilege with respect to Separate Schools which any class of persons have at the date of the passing of this Act, under the terms of Chapters 29 and 30 of the Ordinances of the North West Territories passed in the year 1901 or with respect to religious instruction in any Public or Separate School as provided for in the said Ordinances.

2. Subject to the provisions of the said Section 93 and in continuance of the principle heretofore sanctioned under the North West Territories Act, it is enacted that the Legislature of the said Province shall pass all necessary laws in respect of education and that it shall therein always be provided (a) that a majority of the ratepayers of any district or portion of the said Province or of any less portion or subdivision thereof, by whatever name it is know, may establish such schools therein as they think fit, and make the necessary assessments and collection of rates therefor, and (b) that the minority of the ratepayers therein, whether Protestant or Roman Catholic, may establish Separate Schools therein, and make the necessary assessment and collection of rates therefor, and (c) that in such case the ratepayers establishing such Protestant or Roman Catholic Separate Schools shall be liable only to assessment or such rates as they impose upon themselves with respect thereto.

In the appropriation by the Legislature on distribution by the Government of the Province of any moneys for support of schools ... there shall be no discrimination against schools of any class described in the said chapter 29.

3. In the appropriation of public moneys by the Legislature in aid of education and in the distribution of any moneys paid to the government of the said Province arising from the school fund established by "The Dominion Lands Act" there shall be

no discrimination between the Public Schools and the Separate Schools, and such moneys shall be applied to the support of the Public and Separate Schools in equitable shares of proportion.

The debate which followed lasted from March 22 to May 3. During this time, 96 members spoke on this matter. Thus, the controversy over separate schools in the new provinces of Alberta and Saskatchewan ran its course. Outside of Parliament, heated discussion persisted as the debate came to a close. The compromise satisfied neither those who wanted full provincial freedom on the matter, nor those who wanted the strongest possible federal guarantees for separate schools. After Parliament considered the other issues involved in the autonomy question, the Autonomy Bills were finally passed at midnight on July 5, 1905. The Senate gave its approval on July 18, and the two new provinces were accepted into Confederation.

Conclusion

Another separate schools crisis thus came and went. What was really at stake in this debate were different concepts of the nature of Confederation. In reverting back to the separate school provisions of the North West Territory Act of 1875, Laurier was trying to keep faith with a concept of Confederation which presupposed that the minority was entitled to full constitutional protection of its rights, equal to the protection available to the majority. Hence if the minority wanted clerically-controlled separate schools, regardless of such considerations as local desires, majority distaste, or administrative cost, they were entitled to them. This is what Laurier meant when he spoke of the "spirit" of Confederation.

Opposed to this idea was another which was not so much a concept as a set of attitudes. In 1905 Sifton was outstanding exponent of these attitudes. Sifton and the people of the Territories did not see how constitutional principles applied when there was hardly enough

money available to run one school system, let alone provide for another, or how they applied to separate schools when virtually no one in the Territories but the clergy wanted them. The fact that one part of Canada strongly advocated certain arrangements for another part, seemed irrelevent to the people of the other part, with the local conditions as they knew them.

CHAPTER VI

THE ONTARIO SCHOOL CRISIS

Introduction

The Ontario school crisis is not really one involving the maintenance, integrity, and support of a separate school system of education. The existence in Ontario of a separate school system duly supported by the public treasury was guaranteed by Section 93 of the British North America Act of 1867. Consequently the crisis which occured during the second decade of the twentieth century, and especially during the First World War had nothing to do with separate schools as such.

What it did involve was the existance of a set of bilingual - or largely French-speaking-schools within this separate school system. The issue was the maintenance of these bilingual schools and their continued support by the Government of the Province and the authorities of the separate school system. It did not involve, therefore, a question of religious rights or privileges, but linguistic rights and/or privileges. It is the purpose of this chapter to study this crisis.

In this instance, the protection of a minority depended not only on the bon vouloir of the majority, but also on the will of the minority which shared the same religion, although not the same language, of the "abused" minority. It is a sad commentary on Canadian life, that the English-speaking minority of Ontario was found lacking in its support of the French-speaking Roman Catholic population.

It is well to remember that no bilingual schools existed legally in the Province of Ontario. However, many were tolerated as part of the separate school system of Ontario. The first mention of

the teaching of French in the Government documents of Ontario was made in 1851, and in 1868 the Ontario Government officially accepted a list of French textbooks. In 1885, a regulation was issued to the effect that English was to be the language of instruction in all the schools of Ontario. However, the regulation also permitted the teaching of French and German. Four years later, in 1889, there were 111 schools in which French was a language of instruction and, for the most part, these bilingual schools did not compare favourably with the English-speaking schools. By 1910 there were 200,000 French Canadians in Ontario.[1]

Conflict among the Catholics

The Ontario school crisis developed out of conditions which had existed in the Province of Ontario for some time. Over the years, friction had developed between the French-speaking and English-speaking Roman Catholics of Ottawa. Increasingly the English-speaking Roman Catholics asked that their schools no longer be associated with the French-speaking, Roman-Catholic schools of Ottawa. The English-speaking Roman Catholics explained their position as follows:

> The Irish Catholics of Ottawa want their own schools where their children may be animated by the Irish rather than the French ideal; they have found of late that the French influence upon the formation of the minds of their children tends not merely to over-ride, but even to obliterate, their own.[2]

This friction between English-speaking and French-speaking Roman Catholics was also present at the University of Ottawa. The conflict arose out of the question of to what degree that institution was to be bilingual. Reverend Michael Francis Fallon who wanted the institution to be exclusively English was eventually dismissed.

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1. The Census of 1911 placed the number at 202,442.
2. J. Castell Hopkins, Canadian Annual Review of Public Affairs (36 vols.; Toronto, 1903-39), VI, 360.

After a long visit in the United States, Father Fallon then became Bishop of London, Ontario, in 1910. He soon became the centre of a new controversy there. Bishop Fallon expressed some views on the bilingual schools of his diocese in an interview with the Provincial Secretary, who forwarded them to the Minister of Education. In due course, the letter was stolen from the Department of Education and published in the newspapers. According to the published version, Bishop Fallon was quoted as saying that:

> He has not reached this conclusion at once, but he has resolved, so far as it is in his power, to cause to disappear every trace of bilingual teaching in the public schools of his Diocese. The interests of the children, boys and girls, demand that bilingual teaching should be disapproved and prohibited.... He added that the French masters had been imposed on these schools contrary to the desire of the parents and the interests of the children. He proceeded to say that the politicians and the French-Canadian political agitators did not fail to say that the French-Canadians controlled 15 or 17 countries of Ontario. He replied that the French-Canadians did not control anything of the kind and that they had worked for ten years under falsified or stuffed Census lists as in the Province of Quebec.[3]

Bishop Fallon defended himself against the storm of abuse which descended on him by insisting that his views had been widely known for some time and that he would continue to fight against a system of education "which teaches neither English nor French, encourages incompetency, gives a prize to hypocrisy and breeds ignorance.[4]

After a great deal of comments in the press of Ontario and Quebec, the Ontario Government asked Dr. R.W. Merchant, Chief Provincial Inspector of Public and Separate Schools, to investigate the bilingual schools of the Diocese of London, and elsewhere where these schools existed, and to report on their conditions.

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3. Ibid., X, 422.
4. Ibid., 423.

The Merchant Report

Merchant, who had been appointed on November 2, 1910, presented his report on March 7, 1912. During his investigations, Merchant visited 269 schools in which 538 teachers taught and in which 18,833 French-speaking students were enrolled.[5]

Dr. Merchant was not pleased with what he found. Regulations of the Department of Education were disregarded; many teachers did not possess the necessary qualifications; in those schools attended by French-speaking and English-speaking students, both groups belonging to the same grade were taught in the same classroom; promotions were too rapid; and the level and quality of instruction varied considerably from one school to another, and from one district to another. In his conclusions, he reported that the bilingual schools were "on the whole, lacking in efficiency."

On the other hand, there was no doubt in his mind "that the best results are obtained when the medium of instruction is, in the beginning, the Mother-tongue and that this should include the first four years." He found some hope in the fact that both the French and English teachers taught in their own mother tongue and that the French-speaking and English-speaking students associated together "on the playground." He felt that given qualified teachers ("who have a clear and sympathetic grasp of the needs of the English-French Schools and of the means of supplying them"), the bilingual schools might, "in reasonable time, be made quite as efficient as the schools in English-speaking localities." As a permanent solution, he recommended that "the closer connection of the English-French schools with the High School system of the Province" be enacted.[6]

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5. The total population of these 269 schools were 20,645 pupils of whom, 18,333 were French-speaking. These schools were in the counties of Kent, Essex, Russell, Prescott, Stormont, and Glengarry, in the city of Ottawa, and other unorganized districts. See Hopkins, Canadian Annual Review, XII, 368.

6. Ibid., 269-70.

Instructions No. 17.

Four months after the publication of the report, the Department of Education issued "Instructions 17," based on the Report. These Instructions, which became the centre of the ensuing controversy limited the use of the French language as a language of instruction beyond Grade I. In effect "Instructions 17," or "Regulation 17" as it came to be called, destroyed English-French or bilingual schools. In fact the instructions read as follows:

> Public and Roman Catholic Separate Schools
>
> 1. There are only two classes of Primary Schools in Ontario-Public Schools and Separate Schools; but for convenience of reference, the term English-French is applied to those schools of each class in which French is the language of instruction and communication as limited in 3 (I) below, or is a subject of study in Forms I-IV as limited in 4 below.
>
> (2)As far as practicable, before the close of the school year of 1912-13, the status of all schools attended by French-speaking pupils shall be decided in accordance with the definitions in (1) above.
>
> 2. The Regulations and Courses of Study prescribed for the Public Schools, which are not inconsistent with the provisions of this circular, shall hereafter be in force in the Separate Schools --English and English-French--with the following modifications: The provisions for religious instruction and exercises in Public Schools shall not apply to Separate Schools, and Separate School Boards may substitute the Canadian Catholic Readers for the Ontario Public School Readers.
>
> English-French Public and Roman Catholic Separate Schools
>
> 3. Subject, in the case of each school, to the direction and approval of the Supervising inspector, the following modifications shall also be made in the course of study of the Public and Separate Schools:

The Use of French for Instruction and Communication

(1) Where necessary in the case of French-speaking pupils, French may be used as the language of instruction and communication; but such use of French shall not be continued beyond Form I, excepting during the school year of 1912-13, when it may also be used as the language of instruction and communication in the case of pupils beyond Form I who, owing to previous defective training, are unable to speak and understand the English language.

Special Course in English for French-Speaking Pupils

(2) In the case of French-speaking pupils who are unable to speak and understand the English language well enough for the purposes of instruction and communication, the following provision is hereby made:

(a) As soon as the pupil enters the school he shall begin the study and the use of the English language.

Note--Before the schools open in September 1912, a Manual of Method for use in teaching English to French-speaking pupils will be distributed amongst the schools by the Department of Education.

(b) As soon as the pupil has acquired sufficiant facility in the use of the English language he shall take up in that language the course of study as prescribed for the Public and Separate Schools.

French as a Subject of Study in Public and Separate Schools

4. For the school year 1912-13, in schools where French has hitherto been a subject of study, the Public or the Separate School Board, as the case may be, may provide, under the following conditions, for instruction in French Reading, Grammar, and Composition in Forms I to IV /See also provision for From V in Public School Regulation 14 (5)/ in addition to the subjects prescribed for the Public and Separate Schools:

(1) Such instruction in French may be taken only by pupils whose parents or guardians direct that they shall do so.

(2) Such instruction in French shall not interfere with the adequacy of the instruction in English, and the provision for such instruction in French in the time table of the school shall be subject to the approval and direction of the Supervising Inspector and shall not in any day exceed one hour in each class-room.

(3) Where as permitted above for the school year of 1912-1913 French is a subject of study in a Public or a Separate School, the textbooks in use during the school year of 1911-1912,, in French Reading, Grammar, and Composition shall remain authorized for use during the School year of 1912-1913.

Teachers' Certificate
for English-French Schools

13. (1) After June, 1912, no teacher shall be granted a certificate to teach the English-French schools who does not possess a knowledge of the English language sufficient to teach the Public School Course.

(2) After June, 1912, no teacher shall remain in office or be appointed in any of said schools who does not possess a knowledge of the English language sufficient to teach the Public School Course of study.

Legislative Grants
to English-French Schools

14. The Legislative Grants to the English-French schools shall be made on the same conditions as are the grants to the other Public and Separate Schools, but no grant shall be made to any English-French school which does not provide teachers with the qualification specified in 13 (1) above.

15. On due application from the School Board and on the report of all the Divisional Inspectors, an English-French school which is unable to provide the salary necessary to secure a teacher with the aforesaid qualifications shall receive a special grant in order to assist it in doing so.[7]

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7. Province of Ontario, The report of the Department of Education (Toronto, 1912), pp. 212-13.

Reactions to Regulation 17.

The Franco-Ontarians interpreted Regulation 17 to mean that their language was under attack and that they were now going to be forced to learn English at the expense of French. It is interesting to note that the first arguments against Regulation 17 were based on section 133 of the British North America Act which deals with the use of the French and English languages in Canada. In an official pamphlet published in 1914, it was argued that the federal government "des intérêts généraux de tout le pays," the use of the French language must be considered as part of these "intérêts généraux." Consequently

> En déclarant ainsi sans restriction, et d'une manière absolue, les deux langues, l'anglais et le français, officielles au même titre, pour tout de qui relève du Parlement fédéral, la Constitution enlevait aux pouvoirs provinciaux le droit de supprimer l'une quelconque des deux langues, et leur imposait équivalemment le devoir de faire pour les intérêts de leur province, sous le rapport des deux langues, ce que le Parlement fédéral devait faire pour les intérêts généraux. Dès que, dans une province quelconque de la Confédération, la minorité française ou anglaise serait en nombre suffisant pour constituer un groupe social et avoir ses représentants, le parlement de cette province pour tout ce qui relève de son ressort devait reconnaître et mettre en usage les deux langues officielles. En un mot, par la clause 133, la Constitution reconnaît le Canada-Uni comme pays bilingue dans toute son étendue.[8]

In considering section 93, the pamphlet argued that "il entre dans l'esprit du système ontarien des écoles séparées que cette situation faite à la langue française par l'acte fédératif soit maintenue." Since the government of schools was largely the responsibility of locally elected school commissions, it was only natural that where French-speaking parents formed the majority, that French

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8. Un Comité, La Crise Scolaire dans l'Ontario. (n.p., 1914), P.A.C. II, 4250.

was chosen as the language of instruction, just as similar groups had always decided whether to establish a Catholic school. Although one could question the validity of these constitutional interpretation, there is no doubt that parents, as the authors of the 1950 Report of the Royal Commission on Education in Ontario stated,"resented the arbitrary tone of the document," even those French Canadian who wanted their children to learn English.[9]

Whatever the cause, the result of Regulation 17 was violent social conflict. Bigots on both sides overcame the voices of reason and moderation. Not only did relations between French and English in Ontario became embittered, but Quebec became deeply involved in the controversy. Regardless of the fact that some drastic reforms were necessary in the bilingual schools, it could not have come at a worse moment. For, as the question reached a climax, it contributed to the growing bitterness over the question of participation in World War I, and the issue of conscription. The school controversy reinforced the determination of the conscriptionists and, at the same time, French-Canadian opposition to it. Either issue was capable of arousing extremes of feeling, taken together, they created an atmosphere in which equitable solutions became impossible.

Federal Action

The agitation sparked by Regulation 17 was directed primarily against the Government of Ontario. Several court cases ensued, which were eventually carried to the Judicial Committee of the Privy Council.[10] Eventually, in 1915, the matter reached the federal level.

On April 8, 1915, the Ontario Government passed a law giving the Lieutenant-Governor in Council the right to depose

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9. Province of Ontario, Report of the Royal Commission on Education in Ontario (Toronto, 1950) p. 408.

10. For instance, see R.A. Olmstead, Decisions of the Judicial Committee of the Privy Council Relating to the British North America Act, 1867, and the Canada Constitution, 1867-1954 (Ottawa, 1954), pp.49ff.

the 18 school commissioners of the City of Ottawa and replace them by other government appointees.[11] At the same time, the law declared that Regulation 17 of the Department of Education was now a provincial law. An appeal was eventually made to the Judicial Committee of the Privy Council, and meanwhile many asked that the law be disallowed.

Such requests came from 21 French-Canadian bishops in March, 1916. In fact only the Archbishop of Montreal, his Auxiliary, and the Bishop of Valleyfield refused to sign it. In this petition, the bishops argued: (a) that since the Quebec Resolutions which constituted "un pacte d'honneur liant toutes les provinces entre elles en une Confédération" became the basis of Confederation as established in 1867; (b) the judicial Committee of the Privy Council had declared in the case of Brophy against the Attorney-General of Manitoba that Confederation was "qu'un pacte parlementaire"; (c) section 93 of the British North America Act guarantees the legal existence of separate schools if these existed by law at the time of Union; (d) in 1867 the Catholics of Ontario had the right to elect their school commissioners with powers to name inspectors and teachers, to determine the kind of school they desired, and to receive a proportional share of provincial revenue; (e) in 1915 the Ontario Government passed a law which "porte un préjudice considérable aux droits déclarés intangibles par le Parlement Imperial" and constituted a "violation du pacte de 1867 et des droits qu'il consacre": that in view of all of this and to prevent an agitation which might lead to racial and religious cleavage, the Federal Government would do well to disallow the Ontario legislation.

The first reaction to the matter in Parliament occured in 1915. Senator L.O. David, on March 10, presented a motion in the Senate to the effect that the Senate should go on record as regretting the discord in Ontario and urging that the bilingual question be harmoniously resolved. His motion reads as follows:

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11. Province of Ontario, Statutes, Geo. V.5, cap. 45.

12. Published in P. Landry, Le Désaveu (Québec, 1916) pp.3-4

> That this House, without derogating from the principle of Provincial autonomy, deems it proper, and within the limits of its powers and jurisdiction and in pursuance of the object for which it was established, to regret the divisions which seem to exist among the people of the Province of Ontario in connection with the bilingual school question and believes that it is in the interest of the Dominion at large that all such questions should be considered on fair and patriotic lines and settled in such a way as to preserve peace and harmony between the different national and religious sections of this country, in accordance with the views of the Fathers of Confederation and with the spirit of our Constitution.[13]

The motion was never brought to a vote, and after several attempts to have it debated, was evidently forgotten.

Robert Borden, the Prime Minister, was then requested to intervene privately in Ontario. As he mentioned in his memoirs, one of the most vigourous requests was a letter dated April 20, 1916, from the three French-Canadian Members of his Cabinet.[14] They gave an analysis of the historic rôle and rights of French Canadians, and then they outlined the current situation in Ontario. They feared that the agitation which was then in progress in Canada would be detrimental

> To the best interests of Canada and the Empire, and those of us who would at the present time wish to see the whole forces of the country united in a common effort, are the sad spectators of strife, disunion and discord. The agitation, unfortunately, is neither local nor temporary. It spreads wherever there are French-Canadians, and will last as long as the question is not authoritatively solved. One race is arrayed against the other. Where everybody should be working for the common good, the attention of almost one-third of the population is diverted from what should be the aim and object of every patriotic Canadian, viz., the union, welfare and prosperity of his country. Are we to have here in Canada, for the next twenty-five or fifty years, Canadians

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13. Canada, Senate, Journals, 1915, 195.

14. Henry Borden, ed., Robert Laird Borden; His Memoirs, (2 vols; Toronto, 1938), II, 574-83.

> of French extraction leagued together, taking no part in the administration of affairs, but opposing successive Government until an honourable and equitable compromise has been consummated?

No doubt remembering the narrow legalistic interpretations given in the Manitoba schools question, they did not propose an appeal to the Judicial Committee of the Privy Council. They argued that according to a British Statute (The Imperial Statute, 3 and 4 William IV, Chapter 41, sections 4 and 5) the King may empower a Special Committee of the Privy Council to advise him on particular matters. The three French-Canadian members of Borden's Cabinet asked that Borden place the entire matter at the foot of the Throne. The procedure may have been "extraordinary," but so were the times. Borden was therefore not to view this appeal "with the critical eyes of a lawyer" but from the standpoint of the statesman "who, on great occasions, brushes aside the niceties and quibbles of legal procedure to approve and adopt the plan which may have the most beneficial result."

Borden chose instead to behave as a lawyer. He consulted two of his Ministers and then answered with a trenchant analysis of both the letter and the true constitutional situation as it applied to the Regulation. In short, he pointed out why it was impossible for the federal Government to act.[15]

He began by insisting on the fact that the only constitutional provisions regarding the uses of the French and English languages were to be found in Section 133 of the British North America Act. Borden pointed out that this was the only "provision in the constitution"; therefore "subject thereto," the provinces had "plenary power to determine what language shall be used in the administration of public affairs.

Borden deplored the agitation which was then in progress, but he declined to refer the matter to a Special Committee of the Imperial Privy Council. He argued that Casgrain, Blondin, and Patenaude really wanted him to answer the following questions: the status

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15. Ibid.,583-87.

of the French language in Canada in 1916 and what provisions should be made for it in the future. The first question, he insisted was answered in 1867 through Section 133. If appeals were to be entertained concerning this section, they would have to be directed to the Judicial Committee of the Privy Council.

As regards the second question, Borden felt that it was of an "entirely different character." It was "obviously a question not of law but of policy." In the final analysis, the French-Canadian Ministers proposed "not an interpretation" but "an amendment to the Constitution." Borden could not accept that the Special Committee of the Imperial Privy Council determine this matter. For, as he wrote:

> It is a question that concerns Canada and the Provinces of Canada alone, and therefore should be determined within this country. All steps whether provincial or federal designed to lead to a solution should be taken by those constitutionally responsible to our people. For this Government or for any Government to solicit advice from the Imperial Privy Council on a matter of policy within Canada, not affecting the Empire as a whole, would be in my judgment a departure of grave and far reaching import from proper constitutional procedure.

In conclusion, he stated:

> The Provinces of Canada are invested with souvereign rights in respect of matters confided to them under our constitution. It could hardly be maintained that the Government of Canada should without their consent undertake to refer such matters to a tribunal whose power and duties would be without purpose unless they resulted in a modification or diminution of Provincial powers and an interference with the autonomy which is vested in each Province under our constitutional Act.
>
> The results which might flow from the course which you propose have possibly escaped your consideration. Let us for a moment take an extreme illustration. If the Imperial Privy Council should advise that the use of the French language throughout Canada ought to be abolished in the administration of public affairs can it be imagined that the Province

> or people of Quebec would concur in any such conclusion? On the other hand if the Imperial Privy Council should advise that the French language in the administration of public affairs in every Province of Canada is it to be supposed that the other Provinces would be prepared to accept such advice?
>
> The purpose of bringing about a more complete and cordial union of the two great races in this Country is indeed to be commended and commands my entire sympathy. I cannot, however, believe that either of those races can hope to attain that end by an abridgement of our self-governing powers or by an abdication of our constitutional responsibilities.
>
> In the above observations my colleagues agree. I am compelled therefore with much regret to advise you that the course you urge cannot be taken.

Borden's letter was evidently most discouraging for the three French Canadians. Yet, in no time at all, one of them, the Honourable T.C. Casgrain, adopted the same arguments as Borden had used when he rejected a request from French-Canadian episcopacy for disallowance by the Governor-General in Council.[16]

In advising against the federal disallowance of the 1915 Ontario legislation, the Minister of Justice had argued that section 93 was not involved since the Ontario legislation did not interfere with the rights of parents to establish Roman Catholic schools.

Yet, he did point out that one could consider the use of the federal government's power of veto should a provincial legislation be detrimental to the "peace, order, and good government of Canada " even if the provincial legislation was *intra vires*. However, this could only be done under the most serious circumstances and only with the certainty that such disallowance would "tend to allay" and not to "intensify" the situation.[17]

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16. T.C. Casgrain, *Mémoires de l'Honorable T.C. Casgrain*; C.R.; Ministre des Postes, en réponse à la demande du désaveu de la loi 5, George v, Chapitre 45, faite par l'Episcopat Canadian-français à Son Altesse Royale, le Gouverneur Général en Conseil (Ottawa, 1916); see also Landry, *Le Désaveu*, pp. 5-13.

17. Ibid. pp. 12-13.

The Debate in Parliament

The major episode at the federal level, however, was a motion introduced into the House of Commons by Ernest Lapointe, May 9, 1916. Moved as an amendment to the motion on supply, Lapointe's motion proposed that the House of Commons suggest to the Province of Ontario that it avoid interfering with the right of French-speaking children to learn French. The motion read as follows:

> It has long been the settled policy of Great Britain whenever a country passed under the sovereignty of the Crown by treaty or otherwise to respect the religion, usages and language of the inhabitants who thus become British subjects:
>
> That His Majesty's subjects of French origin in the province of Ontario complain that by recent legislation they have been to a large extent deprived of the privilege which they and their fathers have enjoyed since Canada passed under the sovereignty of the British Crown, of having their children taught in French.
>
> That this House especially at this time of universal sacrifice and anxiety, when all energies should be concentrated on the winning of the war, would while fully recognizing the principle of provincial rights and the necessity of every child being given a thorough English education, respectfully suggest to the Legislative Assembly the wisdom of making it clear that the privilege of the children of French parentage of being taught in their mother tongue be not interfered with.[18]

Mr. Lapointe began the debate by saying that he wanted a discussion on a subject "of the utmost importance for the welfare of this country."[19] Since he wanted to promote harmony and not discord, he was not requesting disallowance by the federal Government of any of the laws of Ontario. He was, however, appealing

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18. Canada, Debates, 1916, 3618.

19. Ibid., 3678.

"to the rulers of that province for a generous and peaceful settlement" of the disturbing question of Regulation 17, and for "a redress of the grievances of the minority." Mr. Lapointe pointed out that it was ridiculous to consider the French language as a foreign language in the provinces when it was one of the official languages of the country.

When the Prime Minister rose to reply, he pointed out several reasons for thinking the motion harmful to the country, and that in many ways, Mr. Lapointe's remarks were irrelevant.[20] He then outlined the position of the French language as defined in the British North America Act, and he made quite clear his unwillingness to go beyond the terms of the constitution. Borden declared that the federal Government had no right to consider such a motion as was being proposed, nor to disallow the Ontario regulation, nor even to advise the Government of Ontario.

Borden then went on to point out the great dangers to Quebec were any such precedent set. Referring to Edward Blake, the great Liberal, in support of his attitude, Borden reminded the House that Blake had stated that Parliament should not bring pressure to bear on a province without the express consent of that province. The Prime Minister then concluded by saying that since no detailed study of the Ontario legislation had been made in Parliament, since the motion referred to a provincial, not a federal, responsibility, since any action taken by the federal Government would put Quebec in a dangerous position, and since Laurier himself was on record as being opposed to federal disallowance, he wondered why the motion had ever been proposed.

The Leader of the Opposition, Sir Wilfrid Laurier, rose to give what is generally considered his last great speech. Laurier supported the Lapointe motion. But he refused to admit that all the considerations were of a constitutional nature. His purpose, he said,

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20. Ibid., 3690ff.

was not to question the right of Ontario to pass such regulations as Regulation 17. Nor did he want to be legalistic. Instead, Laurier wanted "to plead before the people of Ontario, on behalf of His Majesty's subjects of French origin in that province, who complain that, by reason of a statute passed by the province, they have been deprived of rights, in matters of education, which they have enjoyed ever since Canada became a possession of the British Crown." [21]

Laurier then moved on to the major aspects of the issue. Referring to the inefficiency of the schools, which had led in the first place to Regulation 17, he said that the fault lay, not with the system, but with the inadequate enforcement of the system. Not a new system, but better inspection, was all that was necessary. As for Borden's refusal to disallow the Ontario legislation, Laurier did not blame the Government for this, since he knew what the constitution said; but he did regret that the Government had not seen fit to request the Ontario Government to give a "favourable consideration" to the minority. Laurier pointed out that the Franco-Ontarians wanted only "the privilege of having their children taught in the French language untrammelled...." [22] In an effort to disassociate the language issue in Ontario from the other burning issue of the participation of Canadians in World War I, he urged his fellow French Canadians to respond to their duty regardless of "rights or no rights" in Ontario. Then, referring again to the language issue, Laurier emphasized that in claiming the right of French-Canadian children to be taught in their own language, by no means did he wish to imply that the children should not also "receive the benefits of an English education" as well, for, he continued, "no man on this continent is equipped for the battle of life unless he has an English education." [23]

Finally, Laurier came to the question of Regulation 17. Specifically, what he objected to was the use of the word "hitherto"

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21. Ibid., 3697.
22. Ibid., 3701.
23. Ibid., 3703.

in Section 4, which dealt with French as a subject of study in public and separate schools. In his mind, this word meant that French could only be studied in schools where it had been taught prior to 1912. In other words, it seemed that the learning of French would not be extended to new schools built after 1912. Also, he felt that Section 3, (which dealt with the use of French only where necessary as a means of communication) was unduly severe.

The speeches of Borden and Laurier established the main lines of debate on Lapointe's motion. Nothing else of importance was added by those who joined in the debate. It is interesting to note that only once was the point of view of Ontario presented. Mr. W.F. Nickle of Kingston stated that his Province accepted Section 133 of the British North America Act which delineated the position of the French language in Canada. However, Ontario did not see how the section applied to it. The people of Ontario, continued Mr. Nickle, were determined that every child in the Province should receive an adequate education in English. A bilingual system had already been tried, and it had been found wanting: too many of the French-Canadian students had been unable to handle themselves in English. Therefore, Ontario had been obliged to act accordingly. The Member from Kingston did not try to disguise the fact that, as he put it, "it was never contemplated that the French should have equal rights in Ontario with the rights accorded to the English in the province of Quebec."[24]

At the end of the two-day debate, a vote was taken on Lapointe's motion. It was defeated 107-60, which ended any further discussion of Regulation 17 in Parliament. Although the controversy raged for several years to come, the topic never again penetrated the federal chambers.

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24. Ibid., 3723.

The Final Phase

Outside Parliament, the Speaker of the Senate, Senator P. Landry, took over the leadership of the Franco-Ontarians who were battling the Ontario Government. Senator Landry became president of the French-Canadian Educational Association of Ontario, and in that capacity published a pamphlet containing the French-Canadian episcopacy's request to the Governor-General in Council for federal disallowance, a reply by Senator Landry to the opinion of the Minister of Justice, another reply to the Postmaster-General, and lastly a letter Senator Landry had written to Prime Minister Borden. The pamphlet is interesting for the light it sheds on the state of mind of those engaged in the controversy at the time.[25] It also suggests the basis for an appeal for redress under Section 93. Landry insisted that the arbitrary removal of duly elected school commissioners and the limitation placed on the use of the French language by the Ontario legislation of 1915 affected the "Right or Privilege with respect to Denominational Schools which any class of persons have by law in the Province at the Union." This was so, Landry stated, because ratepayers could not administer their schools through their duly elected representatives. Furthermore since Regulation 17 did not specify the religion of the inspectors named by and responsible to the Minister of Education of Ontario, the very idea of confessional schools was in danger. As Landry pointed out

> la minorité catholique de l'Ontario n'a réellement pas ses écoles confessionelles, si les écoles qu'on lui accorde sont soumises à l'influence protestante, contrôlées par elle, mises entre les mains d'inspecteurs protestants qui relèvent directement d'un gouvernement protestant, bref, si de telles écoles ne sont après tout que la doublure de l'école neutre.[26]

The agitation reached a peak in the summer of 1916, after this several events took place which calmed down almost everyone concerned. The first of these was an encyclical, the "Commisso divinitus,"

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25. Landry, Le Désaveu.
26. Ibid., p. 24.

issued by Pope Benedict XV on October 27, 1916, which urged a sense of restraint and spoke of the necessity of co-operation between all portions of the body politic. The Pope insisted that the children of separate schools in Ontario had to learn English. This, he felt, was only fair. At the same time, he silenced the Roman Catholic priests and newspapers. In conclusion, he said:

> Nevertheless, let the Catholics of the Dominion remember that the one thing of supreme importance above all others is to have Catholic schools, and not to imperil their existence, in order that their children, whilst receiving a literary education, should be taught to preserve the Catholic faith, to openly profess the doctrine of Christ, and to live in the exact observance of the Christian law. Love for our children, the good of religion, and the very cause of Christ demand as much. However, these two requirements are to be met, namely, a thorough knowledge of English and an equitable teaching of French for French-Canadian children, it is obvious that in the case of schools subject to the public Administration, the matter cannot be dealt with independently of the Government. But this does not prevent the Bishops in their earnest care for the salvation of souls from exerting their utmost activity to make counsels of moderation prevail, and with a view to obtaining that what is fair and just should be granted on both sides.[27]

Shortly after this came the Privy Council decision which confirmed the validity of Regulation 17, but which limited the school commission which had been set up by the Ontario Government in accordance with George V, 5, c.45. On Regulation 17, Their Lordships decided:

> 1. Their Lordships can find nothing in the Statute to take away from the authority that had the power to issue the Regulations the power of directing in what language that education is to be given....The right of Trustees to manage does not involve the rig ht of deter-

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27. Hopkins, Canadian Annual Review, XVI, 531. See also M. Prang, "Clinics, Politicians, and the Bilingual Schools Issue in Ontario, 1910-17," Canadian Historical Review, Dec. 1960.

> mining the language to be used in schools. Indeed, the right to manage must be subject to the regulations under which all schools must be carried on. There is nothing in the Act to negate the view that those regulations might include provisions to which the appellants object.
>
> 2. It is worthy of notice that the only Section in the B.N.A. Act which relates to the use of English and French language does not relate to education, and is directed to entirely different subject matter.... The inference is to be drawn from this Section that it would not be in favour of the contention of the appellants.[28]

Thus their Lordships refused to admit that the Ontario government had circumvented section 93 of the British North American Act.

After the Pope issued another pastoral letter a year later, on June 17, 1917, in which he spoke again of the need for moderation, the country returned to normal. The war in Europe came to an end, and other problems began to absorb the attention of the country.

The bilingual school issue in Ontario continued to perplex the Province until 1927, although it was never again in the House of Commons after May 1916. In time Dr. Merchant prepared a second report, reassessing the problem in the light of the Regulation 17, and as a result of this report, the Province applied the limitations on teaching in French less rigidly than Regulation 17 had originally established.

Conclusion

No federal action was taken to correct the grievances of the French Canadians in Ontario which resulted from Regulation 17. The federal Government held that according to the British North America Act, it did not have the constitutional power to intervene in Ontario. While this may have been technically true, the federal Government was also well aware of the failure of past attempts in this area.

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28. Hopkins, Canadian Annual Review, XVI, 532.

By 1916, the spirit of the Act of 1867, which had assumed that minorities in Canada would be respected and protected, had been irretrievably lost. Whether the federal Government had the power, whether the British North America Act was inadequate, whatever the constitutional argument might have been, one thing was clear: the federal Government was not prepared to provide adequate protection to Roman Catholic education or to insure the fate of those French Canadians who lived outside Quebec. The English-speaking majority just did not want the only government elected by the whole country to meddle in such matters, whatever the legality of the minorities' claims to protection.

CHAPTER VII

JUDICIAL INTERPRETATION OF SECTION 93

Introduction

It is not within the scope of this study to make any observations on the legal interpretations rendered by the various tribunals which have examined cases or appeals under section 93 of the British North America Act. Such observations belong to the constitutional lawyer or legal expert rather than to the historian. However, it is possible to group these various interpretations together and to suggest how they affected the course of events. Since the cases have already been noted individually in the body of this study, this chapter will only be a summary of this aspect of the topic.

Section 93 of the British North America Act by maintaining the rights and privileges "with respect to denominational schools which any class of persons have by law in the province at the Union"; by extending the rights and privileges of the Roman Catholic minority of Upper Canada "to the dissentient schools" of the Protestant minority in Quebec; by allowing federal interference should the minority be deprived of its "rights and privileges" was meant to offer extensive protection to the minorities. However, the generality of the section left it opened to legalistic interpretations which in time rendered it useless. For instance, what classes of people were protected? what rights and what privileges? what kinds of schools? What constituted "dissentient schools"? What were "denominational schools"? were "schools" only, or a "confessional system of schools" involved in the protection? What did it mean to protect denominational schools existing "by law" at the time of Union? Did those schools which educational authorities tolerated for various reasons and to which they gave subsidies exist "by law" when the colony joined the Canadian Confederation? These and many more questions became the centre of various controversies over the

years. It is the purpose of this chapter to summarize the most important of the judicial cases to which these controversies gave rise.

New Brunswick

The first appeal with respect to section 93 came from New Brunswick. The Roman Catholic minority of that Province claimed that the educational Act of 1871 affected the rights and privileges which Roman Catholics had enjoyed by law under the Parish School Act of 1858. Assisted by the federal treasury, an appeal was made to the Judicial Committee of the Privy Council in the case of Maher vs The Town Council of Portland in 1874. The Privy Council upheld the judgment of the Supreme Court of New Brunswick which had been rendered on June 17, 1873. In the Lower Court, the central question had been "whether any class of person had, by law in this Province, any right or privilege with respect to denominational schools at the Union." The Court contended that the schools which the 1858 legislation had created were "public, parish, or district schools not belonging to or under the control of any particular denomination." It was conceivable of course that the majority of children in any given district would be of one particular denomination and so a certain denominational character might be confered upon a school, but this was due to the accident of number and not because of legal provisions.[1] Consequently, section 93 did not apply.

The case thus restricted the application of section 93 in the following way:

a) denominational schools to exist by law had to constitute a system of schools duly provided by definite and distinct legislation;

b) the ratepayers alone could not decide that one school should be denominational;

c) the government might for various reasons have tolerated denominational schools, but this did not give them any legal existence.

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1. Miller, National Government and Education, pp. 96-98.

Prince Edward Island

In 1877, the government of Prince Edward Island consolidated its various educational laws under one main legislation which was to a large extent modelled on the New Brunswick legislation of 1871. The Catholics, namely the French-speaking population of Prince Edward Island appealed to the federal Government under section 93, claiming that legislation existed to show that denominational and French-speaking schools existed "by law" at the time of Union.

As was discussed earlier, the federal Government refused to intervene. By the decision of the Privy Council of Canada on November 12, 1877, - beside stating that denominational schools did not exist by law in Prince Edward Island before its entry into Confederation - the following restrictions were applied to section 93:

a) "Whatever may have been the course of instruction" carried on in various schools, this did not imply the existence of a denominational school;

b) there had to be a definite legal statement stipulating "the exemption" of schools "from the enactment applying to the schools generally" before a denominational school could exist;

c) even if the government encouraged the continued existence of particular denominational schools as it did in the case of the Anglo-Rustico schools because it did not possess the funds to build as many schools as were needed, this could not be interpreted as constituting "a different system of education";

d) by attaching little importance to the linguistic chatacter of these schools, the Privy Council of Canada suggested that the language of instruction could not be questioned under section 93.[2]

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2. Ibid., pp. 108-14

Manitoba

The Roman Catholic minority which felt deprived of its rights and privileges as existing "by law or practice" at the time of the creation of Manitoba as the fifth province of the Dominion of Canada by the Manitoba legislation of 1890 made several appeals to the judiciary and the federal Government for redress.[3] These various cases and appeals and opinions can be divided under two headings: (1) those which involved the interpretation of sub section 1 of section 93 of the British North America Act and subsection 1 of section 22 of the Manitoba Act of 1870 and referred to the situation at the time of Union; (2) those which involved subsection 3 of section 93 of the British North America Act and subsection 2 of section 22 of the Manitoba Act of 1870 and referred to matters which had occurred since 1870.

In the first series of cases, the Supreme Court of Canada reversed an earlier decision of the Manitoba Court of Queen's Bench and suggested that the key words of subsection 1 of section 93 of the British North America Act or of subsection 1 of section 22 of the Manitoba Act of 1870 were "or practice." The lower court had declared these words to be meaningless. To so view them, declared the Supreme Court, would be to "practically expunge" the whole of the restrictive clause from the statute. The words "or practice" were "plain, certain, and unambiguous, and must be read in their ordinary grammatical sense."[4] The Manitoba legislation was declared ultra vires because it wiped out the denominational system of education existing by practice at the time of Union.

In reversing that decision of the Supreme Court, the Judicial Committee of the Privy Council agreed that denominational schools existed by "practice" at the time of Union. However, the

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3. See, for example, the City of Winnipeg vs. Barrett (Ottawa 1891), Supreme Court; the City of Winnipeg vs. Logan (London, 1892), the Judicial Committee of the Privy Council; Opinion of the Supreme Court of Canada (Ottawa, 1894); Decision of the Judicial Committee of the Privy Council on the City of Winnipeg vs. Logan (London, 1895).

4. Miller, National Government and Education, p. 122.

public treasury was not involved. School expenses were paid through school fees and contributions by the members of the Roman Catholic Church. Consequently, "at their own expense," Roman Catholics could establish schools, support them, and "conduct them in accordance with their own religious tenets." The Manitoba legislation of 1890 did not impair these rights and privileges and Catholics were free to continue to support their own schools. The fact that the 1890 legislation imposed upon everyone the burden of supporting the Province's non-denominational school system was irrelevent since in 1870 there existed no state-supported schools. As their lordships pointed out:

> it would be going much too far to hold that the establishment of a national system of education upon a non-sectarian basis is so inconsistent with the right to set up and maintain denominational schools that the two things cannot exist together, or that the existence of the one necessarily implies or involves immunity from taxation for the purposes of the other.[5]

Consequently, the Manitoba legislation of 1890 was declared intra vires.

Thus, section 93 could not apply to protect the ensemble of privileges and rights which might exist by practice at the time of Union since practice and law were synonimous. Furthermore the exercise of the right and privilege of a denominational school system was limited by its exact definition either by statute or by practice. In the case of the denominational school system of Manitoba which existed by practice at the Union, since there was no government to collect taxes and distribute them, the Roman Catholic population could not claim in the 1890's that their schools ought to be financed by the state since that right or privilege did not exist prior to 1870. Furthermore, the right or privilege of a denominational system did not necessary imply exemption from contributing to the support of public schools. In other words, the denominational schools of Manitoba were in fact private schools and beyond protecting the right on individuals to support indepen-

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5. Ibid., p. 127. (Italics added).

dent denominational schools in addition to their support of the public school system, the courts could do nothing.

The second series of cases dealt really with the right of the federal Government to intervene if the minority felt deprived of its rights and/or privileges. In an opinion given in 1894, the Supreme Court of Canada argued that the federal Government could not entertain remedial action since the Manitoba legislation of 1890 had been declared intra vires. However, a year later, the Judicial Committee of the Privy Council reversed this decision. The basis of their Lordships' decision (in Brophy and Others vs. the Attorney-General of Manitoba) was the rights and privileges which the Roman Catholic minority had enjoyed prior to the Manitoba legislation of 1890. The Privy Council did not hesitate to state that the 1890 educational law of Manitoba did impair these rights and privileges:

> Contrast the position of the Roman Catholics prior and subsequent to the acts from which they appeal. Before these passed into law there existed denominational schools, of which the control and management were in the hands of Roman Catholics, who could select the books to be used and determine the character of the religious teaching. These schools received their proportionate share of the money contributed for school purposes out of the general taxation of the province, and the money raised for these purposes by local assessment was, so far as it fell upon Catholics, applied only towards the support of Catholic schools.[6]

The legislation of 1890 had impaired all these rights and privileges. In view of this, therefore, their Lordships concluded: "it does not seem possible to say that the rights and privileges of the Roman Catholic minority in relation to education which existed prior to 1890 have not been affected."[7]

Because of this, it was of course admissible for the Governor-General in Council to entertain remedial action.

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6. Ibid., pp. 132-33.

7. Ibid.

All these opinions and decisions suggested that: (1) even if rights and privileges did not exist by law or practice at the time of Union, they could be granted later by legislation; (2) once granted, they became part and parcel of those existing at the time of Union; (3) these rights and privileges could be removed by subsequent provincial legislation; (4) such legislation would then be intra vires; (5) but in spite of that, the Governor-General in Council could take remedial action.

To a layman, the confusion of all this would seem to imply that the protection of minorities is impossible.

Ontario

The same confusion involved in the various cases during the Manitoba schools crisis was prevalent over those cases involving Regulation 17. Since many separate school boards refused to comply with the Regulation and felt it to be a violation of subsection 1 of section 93 of the British North America Act, the provincial Department of Education witheld provincial grants. Eventually, the matter went to the courts, the most important case being that of the Trustees of the Roman Catholic Separate Schools for the City of Ottawa vs. Mackell and Others, which went to the Privy Council in 1916.

The decision of the Privy Council limited the application of section 93 in the following way:

1. right or privilege involved "is a legal right or privilege, and does not include any practice, instruction, or privilege of a voluntary character which at the date of the passing of the Act might be in operation;"[8]
2. the "class" of persons referred to can be determined according to "religious belief," and not according to "race of language;"[9]

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8. Ibid., p. 179.
9. Ibid.

3. Roman Catholics together form a class which "cannot be subdivided into other classes by considerations of the language of the people by whom that faith is held;"[10]
4. the "kind of school" which the Trustees were authorized to provide by legislation which existed in 1867 did not imply kind as to language or religion, but only as to whether the school should be "a girls' school, a boys' school, or an infants' school, and ... not a school where any special language is in common use;"[11]
5. provincial regulations of the Department of Education must override the wishes of the Trustees who must conduct their schools in accordance with these regulations if they are to receive public funds, provided that these regulations did not interfere "with a right or privilege reserved under the Act of 1867, i.e., a right or privilege attached to denominational teaching;"[12]
6. the right "to manage," which belonged to the Trustees by statute, did not involve "the right of determining the language to be used in the schools."[13]

Conclusion

It would appear from all these decisions that section 93 of the British North America Act offered very limited protection of the educational rights of the minorities. It did not involve language rights, denominational schools tolerated by custom, practice or necessity; and those which received provincial subsidies on a sufferance and/or temporary basis. To receive protection, schools had to constitute a system for which definite legislation existed at the time of Union.

However, one wonders if the 1895 decision of the Judicial Committee of the Privy Council (Brophy and Others vs. The Attorney-General of Manitoba) did not constitute an interesting precedent.

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10. Ibid.
11. Ibid., p. 180.
12. Ibid., (Italics added).
13. Ibid., p. 182.

The point of departure of that decision was that it involved not only the time of Union, but since Union. What would have happened had this procedure been followed in all the other school crises under review? It is of course difficult to say, but there is no doubt that all the attempts urge to have the federal Government disallow or veto provincial legislation or to have the courts declare a provincial statute to be ultra vires were destructive. The case of Brophy and Others demonstrated the possibility of a direct appeal to the Governor-General in Council in spite of the intra vires character of the provincial legislation. In other words, subsections 3 and 4 of section 93 of that act need not be read altogether.

The protection of the educational rights and privileges of minorities became not a legal question as much as a political one. The story would be very different had the politicians not hidden under the mantle of the Courts.

CONCLUSION

Introduction

Section 93 of the British North America Act permits the federal Government to intervene in the "exclusive" preserve of the provinces (education) when the minority feels deprived of the rights which it had by law at the time of Confederation. The representatives of the minority in New Brunswick, Prince Edward Island, the North West Territories, and Ontario all appealed to the federal Government under section 93 of the British North America Act and in everyone of these cases the federal Government refused to act. In the case of Manitoba, it decided to act too late for its intervention to have much effect. Later, when the frontiers of the Province of Manitoba were extended to include the territory known as Keewatin, the federal Government simply did not choose to act. When the federal Government tried to guarantee the educational rights of the Roman Catholic minority in the provinces of Alberta and Saskatchewan it was prevented from doing so. Finally, in 1949, when Newfoundland joined Confederation, section 93 was changed in order that appeals of the minority would go directly to the Supreme Court of Canada. After 82 years, the federal Government decided to abandon its role as the protector of the educational rights of the minority, a role it had proved incapable of fulfilling.

The reasons for this impotence are varied and numerous. The most important were:

a) The type of society being erected in Canada.
b) The terms of section 93.
c) French-Canadian leadership.
d) Bigotry and prejudice.
e) Provincial autonomy versus minority rights.
f) French-Canadian indifference to educational standards.

The Type of Society being Erected in Canada

Post-Confederation Society was a frontier one. As such, its basic social philosophy was social and political egalitarianism.

English-speaking Canada therefore frowned upon any form of privilege or special treatment. The agitation for legal protection of separate schools appeared as an attempt to have the state recognize special privileges of a particular section of the population.

Furthermore, the population of English-speaking Canada was considerably increased by immigration. The new arrivals had no roots in the New World. They had to plant some. They belonged to many and varied linguistic, religious, and racial groups. To protect one and not protect the other would be unjust. And to recognize them all officially would be chaos. The best plan to many therefore was a process whereby the many differences which existed would be -- if not eliminated -- at least minimized. A unified school system was seen as such an excellent place to institute such a process. That system had to be as flexible as possible. It had to be supported by the taxes of every home-owner regardless of his religious affiliation. It had to be non-sectarian and the language of instruction had to be English.

The Terms of Section 93

Although it is quite difficult to say exactly what went on in the constitutional conferences which were held in Quebec and in London, nevertheless the various preliminary drafts of the constitutional act suggest a great deal of division among the Fathers of Confederation. Galt was determined to entrench the Protestant rights in Canada East firmly in the Constitution. The delegates from Canada West had never been the great defenders of separate schools, but the system did exist by law in their area. They had therefore to accept this fact. It is also possible that the presence of English-speaking Canadians in Canada East influenced Canada West since any refusal to guarantee the educational rights of the minority in what is now Quebec would have meant their eventual assimilation. Then, as now, the Protestant school system of Canada East was not denominational as much as it was (and is) cultural. Had the school system of Canada East been divided according to language rather than religion, historians might have another story to tell. The British North America Act would be without section 93.

In the Maritimes, the non-sectarian movement was definitely launched by the time the British North American delegates assembled at the Westminster Palace Hotel in London at the beginning of December 1866. Yet, in all the three Maritime Colonies of British North America, Roman Catholic schools existed, being tolerated by the force of circumstance. This did not imply, though, that these colonies had instituted or favoured a denominational Roman Catholic school system.

Section 93 is a reflection of all these views. It was meant only for Canada East. The Roman Catholic schools of Canada West were included only by the accident of previous legislation, legislation passed only because the French Canadians of Canada East lent it their support.

Had the Fathers meant to protect minority rights (or had they been conscious of what we like to call in 1965 "French-Canadian equality"), they would have accepted the suggestion of extending federal protection to those schools which existed by "custom." If we believe the various preliminary drafts of the British North America Act, there is no doubt that some thought was given to this solution. However, the record shows that the suggestion was not acceptable to many.

French-Canadian Leadership

Although French Canadians were greatly concerned about educational rights, they do not appear to have exercised decisive leadership either during the formulation of the British North America Act or during the various crises which arose after Confederation.

Hector Langevin appears to have been the spokesman of French-Canadian Roman Catholic interests in this matter. In fact, his correspondence shows that both he and his colleagues regarded him as such. By temperament, Langevin was an Ultramontane with all the assets and the limitations which this political position imposed. Furthermore, two of his brothers were members of the higher clergy of Quebec: Jean was the Principal of the most important normal school in Quebec City, and he was soon destined to become

the first Bishop of Rimouski, and Edmond was a Grand Vicaire. His views on the educational question were included almost daily in the letters he sent home. For their part, his brothers kept the Roman Catholic hierarchy of Canada East informed of the latest developments and forwarded to their brother the thought of the Bishops and priests with whom they came in contact.

However, they did not have much to pass on to Hector. It is interesting to note that the French-Canadian episcopacy and clergy were not overly concerned with the educational rights of the Catholic minority in the rest of British North America. In this, they shared the view of almost everyone in Quebec East. The new Province of Quebec was to be the bastion, the fortress, of French-Canadian life and the protector of la survivance. Everything else was subordinated to this. Consequently, most French Canadians were not prepared to antagonize the majority of English-speaking Protestants. Too great powers of interference given to the federal Government might in the long run prove disastrous. Langevin, a few years after Confederation, made this quite clear to his brother when he wrote:

> D'ailleurs prenons garde de ne pas risquer nos droits, privilèges et garanties constitutionels, pour tenter un effort inutile en Angleterre en faveur des catholiques du Nouveau-Brunswick. L'acte constitutionnel est un pacte ou un traité entre le Haut et le Bas-Canada et la Nouvelle-Ecosse et le Nouveau-Brunswick. Y toucher malgré la majorité de la Nouvelle-Ecosse et du Nouveau-Brunswick, c'est préparer les voies et créer un précédent pour l'intervention du Parlement fédéral dans nos affaires Bas-Canadiennes.[1]

This fear of federal interference, which became more pronounced as French Canadians became more and more of a minority outside Quebec, explains the fluctuation of their views and interests during the many educational crises. Manitoba is an exception. But the reasons for this are essentially that the minority to be defended there was a French-speaking one with definite constitutional rights

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1. Collection Chapais, Hector Langevin to Edmond Langevin, May 12, 1873.

and the episcopacy's fear of an electoral victory for the Liberal party, a party which was questioning the Church's magisterium in education.

Bigotry and Prejudices

Although Canadian society may have been animated by the principle of egalitarianism, it was not without bigotry and prejudice. The failure to ensure adequate protection to the minorities is largely due to this fact. The Manitoba schools crisis for instance began because of the Ontario Protestant furor over the Jesuits Estates' Act of 1889. To the men who led the agitation for the abolition of separate schools in Manitoba, the time had come "to make this a British country in fact and in name."

Bigotry and prejudice were also present during the Autonomy Bills crisis. It is doubtful that any other words can describe Goldwin Smith's point of view:

> It should be borne in mind that the term "separate" in this connection practically means Roman Catholic, and that what is proposed is that the new Provinces shall be bound forever to recognize, maintain and propagate the Roman Catholic religion. The assumption that a provisional arrangement made for a Territory in tutelage to the Dominion Government must be carried on to a Province invested with legislative powers on the subject seems to be manifestly untenable. That any one can be entitled to insist on a continuance of that arrangement of bound to submit to it, surely, it is impossible to contend.[2]

J.S. Willison, in the Globe, bitterly attacked what he called this "endowment of clerical privilege," this "fastening the dead hand of denominational control" upon Saskatchewan and Alberta.[3]

Although many bigots directed their assault essentially against Roman Catholic "ecclesiasticalism," nevertheless, they included French Canadians due to the fact that all those who accepted the concept of separate schools were Roman Catholics.

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2. Hopkins, The Canadian Annual Review, V, 63.
3. Skelton, Laurier, II, 229.

Provincial Autonomy versus Minority Rights

Section 93 of the British North America Act created a dilemma. The protection of minority rights was given to the federal Government; yet, the federal Government's intervention was limited by the fact that education was the "exclusive" preserve of the provinces. The debate in the House of Commons during the school crisis of New Brunswick and Prince Edward Island demonstrated the conflict of provincial autonomy versus minority rights. In these two crises, the Members of House argued that the federal Government could not protect the minorities in these two provinces on the grounds that denominational schools did not exist by law at the time Confederation. To suggest to New Brunswick and to Prince Edward Island that they should legally guarantee denominational schools would be to dictate to the provinces a course of action with which they did not agree. In this, the House of Commons followed the opinion which had prevailed at the London Conference of 1866.

The conflict between minority rights and provincial autonomy became more apparent with the Manitobe schools question. Although the federal Government's responsibility of intervention was unquestionable, many still argued that to use federal power to protect minorities would mean "an abridgement of provincial rights."[4] Laurier considered such a position "ridiculous." For it meant that in the name of provincial autonomy, minorities were to be sacrificed.

French-Canadian Indifference to Educational Standards

There is no doubt that the French-speaking separate schools in Manitoba, the North West Territories, Ontario and in the district of Keewatin did not compare favourably with the English-speaking schools of those provinces, whether these be public or separate. For the most part, the teachers who taught in French-speaking schools in these provinces were not qualified to teach and there are many instances of episcopal attempts to make special provisions for the teachers of religious communities.

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4. Laurier Papers, Laurier to Willison, August 2, 1895.

In all these provinces, the school authorities of the French-speaking schools tended to disregard the regulations and instructions of the various Boards and Ministries of Education. The result was that French-speaking students were not educated as adequately as their English-speaking counterparts.

By the very fact that French Canadians believed that they alone constituted a Roman Catholic presence and that their survival as a distinct people was intrinsically linked to "la foi," religious instruction became dominant. Largely taught by men and women whose own education was limited, the students made little progress even in their use of the French language. At the same time, the teaching of English was often carried out by teachers who viewed English as a means of Protestantization and Anglicization.

Principles for interference and non-interference

In all the crises of education in which the federal Government was asked to intervene, the constitutional aspect reigned supreme. Alghough the constitutional provisions were easily comprehensible to the Fathers of Confederation, it does not appear that their successors possessed the same mental agility. Before intervening, the federal Government always made sure of its constitutional position. It considered that its intervention could only be justified if section 93 was obeyed to the letter. The spirit of that section and the thoughts of those who framed it originally do not appear to have been predominant in the minds of successive generations.

Beside this principle of determined constitutionality, the federal Government accepted the principle of provincial autonomy as having a prior claim over the protection of minority rights. If constitutional doubts could be entertained in New Brunswick, Prince Edward Island, and in Ontario, surely this cannot be said of Manitoba and the North West Territories nor may it be said of the Autonomy Bills of 1905 and the Keewatin interlude of 1912.

The minorities who wished to be protected and who considered the federal Government as their lawfully constituted protector

appealed to the federal Government more in accordance with the spirit of section 93 than with the letter of it. This is what the French Canadians who wrote to Borden in the midst of the Ontario schools crisis meant when they asked him to look at the plight of the French language in Ontario, not through the eyes of a lawyer, but through those of a statesman. And this is what Joseph Israel Tarte had in mind when, in a moment of exasperation, he wrote in Le Canadien on September 3, 1892: "Il n'y a pas de tribunal sous le soleil qui ait juridiction de dépouiller un peuple de sa liberté religieuse, de ses droits à l'existence, de sa nationalité." Unfortunately, these views were never able to move the legal experts.

In all this discussion, it must be remembered that we are dealing with the educational rights of minorities, specifically those of the Roman Catholic population in the various provinces outside of Quebec. The historical precedents mentioned in this study do not apply to the Protestants or to non-Roman Catholic minorities wherever they may exist in Canada. Many have felt that had the Protestant minority been deprived of its constitutional rights, another story might have to be told.

It is also well to remember that in every province where the educational rights of the Roman Catholic minority became the centre of controversy, there were a substantial number of Roman Catholics who were French-speaking Canadians. Consequently, the abolition or limitation of the educational rights of the minorities outside of Quebec was bound to affect them on two levels. First, they were affected by virtue of their being Roman Catholics; and secondly, by the fact that they were French-speaking Canadians. In other words, to limit the constitutional, educational rights of the Roman Catholic minority was in essence to slowly destroy or limit the existence of a French-speaking presence outside Quebec.

Had the educational rights of French Canadians not been intimately linked with those of the Roman Catholics, the historical evolution of the protection given them would not have been that much different. The demands of the frontier and of a new society would still have imposed the abolition of these linguistically

separate schools unless the Fathers of Confederation had constitutionally protected them. However, it does not appear that in the minds of the Fathers of Confederation the British North America Act permitted the establishment of a true equality of French-speaking Canadians and English-speaking Canadians .

Yet, had the French-speaking schools outside Quebec not been closely associated with the religious question, protection might have been more politically possible. This statement may not have much validity if one bears in mind Manitoba, the North West Territories, Ontario, and Keewatin; but New Brunswick and Prince Edward Island might have created precedent on which to build.

Federal Interference between 1867 and 1917.

The federal Government used many methods in fulfilling its responsibilities under section 93. It first thoroughly studied the legal and constitutional aspects of the question. The purpose of this legalistic soul-searching was to ascertain if the federal Government had the constitutional right to intervene. The law officers of the government studied section 93 of the British North America Act and the conditions of the separate schools as existing by law at the time of Confederation. Although political considerations were not far behind, legal and constitutional ones were given prime importance.

In most instances, the federal Government paid for the minorities' appeals through various Courts including the Judicial Committee of the Privy Council. These appeals served primarily as a delaying tactic. The federal Government was not disposed to disallow the educational legislation of the provinces. It believed, as Sir John Thompson once wrote, that it could not undertake to correct "all improprieties and unfairness" in provincial legislation by the use of disallowance. However, it should be remembered that the federal Government did not hesitate to disallow provincial legislation covering other matters than education.

The refusal to disallow provincial educational legislation which affected the rights of the minorities was inspired more by politics than by Constitution. In most crises, unwilling to do anything, the

federal Government sought delay in appeals to the Courts with the hope that the agitation would cease and the day of reckoning be delayed.

The appeals to the Court greatly impaired the federal Government's powers of intervention under section 93 of the British North America Act. In the end the federal Government abdicated responsibilities as the protector of the minorities in favour of the judiciary. Yet, even when the judiciary permitted the federal Government to intervene, Ottawa was reluctant to do so.

The use of a remedial order was seriously contemplated only once during the Manitoba schools' crisis. The weakness in such a method may be easily seen in Chapter III. Yet, had the remedial order and legislation come at the very beginning of the crisis, it might have been possible to implement them, although the Province of Manitoba was determined to do away with separate schools. This is not to suggest that the essential problem in any federal intervention, that is the financial one, would have been easily resolved. However, it should be remembered that the essential agitation against separate schools in Manitoba was not financial but political. The Greenway Government was caught in a series of scandals and the separate schools' question served as an issue to distract the attention of the electorate. The agitation was also religious and racial in so far as it was the direct result of the Jesuit Estates' Act of 1889.

Unwilling to disallow provincial educational legislation which impaired the separate schools' system and fearful of a too sympathetic endorsement of the decisions of the Judicial Committee of the Privy Council which found against the minority, the federal Government attempted to cajole the English-speaking provinces into guaranteeing better terms to the minorities. These appeals to the good nature of the majority, to its sense of fair play, and to the difficulties in reconciling the various races and religions in Canada were included in the official representations of the federal Government in the debates of the House of Commons and in the private letters of politicians. None of them appear to have had a considerable

influence. The provinces did as they wished and when concessions were made, they never consecrated the principle of separate schools, but merely made certain administrative accommodations.

Furthermore, in every educational crisis when the federal Government had decided not to intervene, it generally reminded the Members of Parliament from the Province of Quebec that the use of the federal Government's power of intervention was a method whereby the federal Government dictated a course of action to the provinces which they were not prepared to accept. In the long run this intervention would be more dangerous for Quebec than for the other provinces since Quebec was represented as being -- to use a modern phrase -- "une province pas comme les autres."

This argument always had the intended result. It was wholeheartedly endorsed by the French-Canadian representatives in Ottawa. In this they were merely continuing the practice which had been laid down during tha various constitutional conferences prior to Confederation. French Canadians have failed to shoulder the burden of responsibility in the evolution of the federal Government's powers of intervention for the protection of minorities. They, as well as their English-speaking counterparts are responsible for the fact that the constitutional guarantees of 1867 became inoperative soon after Confederation had begun.

In devising an alternate policy to disallowance, to judicial recourse, or to remedial order and legislation, the federal Government through its members made use of many intermediaries. The Roman Catholic episcopacy was adroitly divided between the French-sepaking Bishops and the English-speaking ones. The pressure on one group was generally used to offset the point of view of the other. For instance, in the New Brunswick School crisis, the French-Canadian episcopacy objected to censuring the federal Government. During the Manitoba crisis there was a more unanimous episcopal position (Bishop Sweeney remembering French-Canadian attitudes in 1871 refused to sign any episcopal statement); however, the English-speaking one was more flexible than the French-Canadian one.

Political parties tended also to counterbalance each other. For instance, when the Liberals were in opposition during the New Brunswick school crisis, they assumed a position diametrically opposed to the one they held when they came to power after 1874. The same may also be said for Liberal and Conservative opinion during almost every other crisis.

The sending of an Apostolic Delegate in the person of Monseigneur Merry Del Val in March 1897 and the creation of an Apostolic Delegation a year later meant that another intermediary was interposed between the provincial Government and the Roman Catholic minorities. From 1897 onwards, negotiations were no longer between the provincial Government and the Canadian episcopacy, but between the federal Government and the representative of Rome. The Laurier Papers are full of letters to and from Merry Del Val and to and from Archbishop Sbaretti suggesting the important role both ecclesiastics played in the solutions of the problems created by the Manitoba schools' crisis, the Autonomy Bills, and the Keewatin affair.

As a final conclusion, very little protection ever existed under section 93 of the British North America Act. The provinces have become more and more autonomous in the exercise of their exclusive jurisdiction. Within very narrow terms of reference, a minority feeling deprived may seek redress through the Courts, but not much can be expected from such interventions.

Yet, it must be admitted that the evolution of appeals under section 93 of the British North America Act suggests that the responsibility for protecting the educational rights of the minority is more that of the politician than that of the judges. This of course implies greater flexibility. After the case of Brophy and Others, the point of departure is no longer "at the time of Union" but "since the time of Union." Consequently, once a difference between those conditions existing at the time of Union and those existing since has been established by the Courts, presumably the federal Government could move to correct the injustice, or redress the balance.

However, all the incidents described in this study, especially those of Manitoba and the North West Territories, suggest the limitation of federal intervention because the constitution did not empower the federal Government with the means to impose its intervention. It is said that only an army could have imposed and administered the Remedial Bill of 1896. All federal intervention was doomed since this weakness was never corrected. The final fault must lie with the original terms of section 93 itself.

APPENDIX I

SUBJECT OF PROJECT

FEDERAL INTERVENTION UNDER SECTION 93 OF THE BRITISH NORTH AMERICA ACT

INTRODUCTION

1. Public and Separate Schools in British North America before Confederation.
2. Formulation of the terms of Section 93 of the British North America Act.

I THE NEW BRUNSWICK SCHOOL CRISIS of 1871-74

II THE PRINCE EDWARD ISLAND SCHOOL CRISIS of 1877

III THE MANITOBA SCHOOL CRISIS, 1870-96

IV THE MANITOBA SCHOOLS ISSUE AFTER 1896

V THE SEPARATE SCHOOL CRISIS OF 1905

VI THE ONTARIO SCHOOL CRISIS

VII JUDICIAL INTERPRETATION OF SECTION 93

CONCLUSION

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APPENDIX II

Section 93 of the British North America Act

In and for each Province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions:-

1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union.

2. All the powers, privileges, and duties at the Union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

3. Where in any Province a system of separate or dissentient schools exists by law at the Union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any Act or Decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

4. In case any such Provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor-General in Council under this section.

APPENDIX III

NEWFOUNDLAND

Terms of Union 1949, Canadian Statutes, Chapter 1, Sec. 17.

In lieu of section ninety-three of the British North America Act, 1867, the following Term shall apply in respect of the Province of Newfoundland:

In and for the Province of Newfoundland the Legislature shall have exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland, provided for education,

a) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature; and

b) all such colleges shall receive their share of any grant from time to time voted for all colleges then being conducted under authority of the Legislature, such grant being distributed on a non-discriminatory basis.

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